

1 UNITED STATES DEPARTMENT OF AGRICULTURE  
2 BEFORE THE SECRETARY OF AGRICULTURE

3 IN re: Docket #AO-F&V-991-A3; FV03-991-01  
4 HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO AND  
5 CALIFORNIA  
6

7 Hearing held on the 15th day of October 2003  
8 at 9:00 a.m.

9 Portland, Oregon

10 TRANSCRIPT OF PROCEEDINGS  
11  
12

13 BEFORE: HONORABLE JILL CLIFTON  
14  
15  
16

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## P R O C E E D I N G S

October 15, 2003

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ADMINISTRATIVE LAW JUDGE: This record is being made on Wednesday October 15, 2003 in Portland, Oregon. The time now is approximately 9:12 in the morning. The purpose of the hearing is to make the record on which a Decision will be made by the Secretary of Agriculture regarding hops produced in Washington, Oregon, Idaho and California. My name is Jill Clifton. I'm a U.S. Administrative Law Judge. I'm assigned to take in the evidence on which the Decision will be made. And I want to acquaint you with the difference between a hearing and a meeting. This is a public hearing. And we're gathering the evidence on which the Decision will be made. So it's very important that we go slowly enough that a good record is made. So if you will, when you speak, identify yourself each time you begin to speak again anew. In a moment, I'll have each of you who expects to participate in the proceeding identify yourself, but because many of us will be using the same mike and we can't identify the speaker merely by which mike is used, I need for you, please, again to state your name each time you speak. And I'll try to remind you of that. I would like each witness -- each person

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1     who's providing testimony -- and there are only two  
2     kinds of evidence, testimony and exhibits -- I would  
3     like each witness to testify from the location to my  
4     left. I think -- and each witness will be either placed  
5     under oath or affirmation to tell the truth. This is  
6     what makes a difference between someone's statement as a  
7     comment or an argument and witness evidence. So  
8     although it may be somewhat uncomfortable and it may  
9     slow things down a little bit for the witnesses to come  
10    testify here to my left that's how I'd prefer us to  
11    proceed. We also have a microphone at the podium. Now,  
12    that's now where a witness would provide testimony, but  
13    that's where someone who wants to question a witness  
14    will have that opportunity. We have proponents of the  
15    proposals that are going to be presented here. We have  
16    opponents of those proposals. Some of those are  
17    identified and some of those people are not necessarily  
18    identified but wish to be heard and come to the hearing.  
19    If you have something to say, then you should do it as a  
20    witness so that it has weight as evidence. If you  
21    merely want to question the witness who's speaking, you  
22    will have an opportunity to do that. I need to have you  
23    identify yourself at the time that the other people have  
24    finished their question. Then everyone else who has  
25    questions would have that opportunity as well. Now,

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1 we're scheduled to begin the hearing each day at 8:30 in  
2 the morning and to conclude at 5:00 in the evening.  
3 We'll have a lunch break. Normally I have at least one  
4 break in the morning and at least one break in the  
5 afternoon in addition to the lunch break. It's best if  
6 the presenter at the portion of the hearing can help us  
7 gauge when would be a good time to break. So if any of  
8 you have any special concerns that way there's a  
9 particular speaker who must be heard now in order to  
10 catch a plane, please just make me aware of those. And  
11 I'll be happy to announce what the request is and hear  
12 what the others of you think about that request so that  
13 we can schedule in accordance with the convenience of as  
14 many of you as possible. I'd like now to do another  
15 test of the microphones as we go around the room and  
16 hear who you are. If the people in the back cannot  
17 hear, please raise your hand. I'd like to start with  
18 representatives of the United States Government. Ms.  
19 Deskins, would you identify yourself please?

20 MS. DESKINS: Yes. My name is Sharlene  
21 Deskins. I'm an attorney with the United States  
22 Department of Agriculture, Office of General Counsel.  
23 My office address is 1400 Independence Avenue Southwest,  
24 Washington, DC. The zip code is 20250-1417. And I  
25 represent the Agricultural Marketing Service in this

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1 case. I would like to point out to everyone, as the  
2 Judge has said, that this is a public hearing. It is  
3 also formal rule making and we are governed by the rules  
4 of practice on this proceeding. Anyone with  
5 Agricultural Marketing Service or Office of General  
6 Counsel cannot have any ex parte discussions regarding  
7 the issues of this hearing. If you have anything that  
8 you'd like to say to the government, you do need to say  
9 it on the witness stand and that way we can hear what  
10 you have to say.

11 ADMINISTRATIVE LAW JUDGE: Ms. Deskins,  
12 thank you. And would you spell your name for the  
13 record.

14 MS. DESKINS: It's -- first name is spelled  
15 S-h-a-r-l-e-n-e. The last name is spelled  
16 D-e-s-k-i-n-s.

17 MS. DEC: Good morning. I'm Anne Dec. I work  
18 with USDA's Agricultural Marketing Service in the  
19 Marketing Order Administration Branch. My office is in  
20 Washington, DC.

21 ADMINISTRATIVE LAW JUDGE: Ms. Dec, would  
22 you spell your names please.

23 MS. DEC: D-e-c.

24 ADMINISTRATIVE LAW JUDGE: And Anne?

25 MS. DEC: A-n-n-e.

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1 MS. FINN: Good morning. My name is Kathleen  
2 Finn. That's K-a-t-h-l-e-e-n F-i-n-n. I'm a marketing  
3 specialist in the U.S. Department of Agriculture  
4 Marketing Order Administration Branch in Washington, DC.

5 MR. BROADBENT: Barry Broadbent.  
6 B-a-r-r-y B-r-o-a-d-b-e-n-t. I'm a marketing specialist  
7 with the Northwest Marketing Field Office for the  
8 Marketing Order Administrative Branch of USDA.

9 ADMINISTRATIVE LAW JUDGE: And where are  
10 you stationed?

11 MR. BROADBENT: Portland, Oregon.

12 MR. OLSON: My name is Gary Olson. My name  
13 is spelled G-a-r-y O-l-s-o-n. I'm the regional manager  
14 of the Northwest Marketing Field Office, Agricultural  
15 Marketing Service, Fruit and Vegetable Programs here in  
16 Portland. My address is 1220 Southwest Third Avenue,  
17 Room 385, Portland, Oregon, 97204.

18 DR. HINMAN: My name is Donald Hinman.  
19 D-o-n-a-l-d H-i-n-m-a-n. I'm an economist with the  
20 Economic Analysis and Program Planning Branch, Fruit and  
21 Vegetable Programs, Agricultural Marketing Service, U.S.  
22 Department of Agriculture. And my office address is in  
23 Washington, DC.

24 MS. RAZICK: I'm Nazima Razick. N-a-z-i-m-a  
25 R-a-z-i-c-k. I'm an attorney at the USDA Office of

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1 General Counsel in Washington, DC.

2 ADMINISTRATIVE LAW JUDGE: Thank you. Now  
3 I believe everyone could hear each of those speakers.  
4 Is that correct? If you give me a yes from the back of  
5 the room. Good. Good. Well, I think our investment of  
6 time was well with it. Let's begin with the Proponents  
7 Committee table now.

8 MR. MONAHAN: Thank you, Your Honor. My name  
9 is Brendan Monahan. I'm an attorney from Yakima,  
10 Washington. I represent the Proponents Committee.

11 ADMINISTRATIVE LAW JUDGE: Would you spell  
12 your names for us?

13 MR. MONAHAN: I'm sorry. First name Brendan,  
14 B-r-e-n-d-a-n. Last name Monahan, M-o-n-a-h-a-n.

15 MR. K. DESSERAULT: Yes. I'm Ken Desserault.  
16 Grower, State of Washington, Yakima.

17 ADMINISTRATIVE LAW JUDGE: Would you spell  
18 your names for us?

19 MR. K. DESSERAULT: K-e-n D-e-s-s-e-r-a-u-l-t.

20 MR. SMITH: I'm Michael Smith. A grower  
21 from Yakima. That's S-m-i-t-h.

22 MR. ROY: My name is Leslie Roy. L-e-s-l-i-e  
23 and R-o-y.

24 ADMINISTRATIVE LAW JUDGE: Are you a grower  
25 as well?

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1 MR. ROY: I'm sorry. Yes. I am.

2 ADMINISTRATIVE LAW JUDGE: Where?

3 MR. ROY: From Yakima Valley.

4 ADMINISTRATIVE LAW JUDGE: Thank you.

5 MR. CARPENTER: My name is Stephen Carpenter.

6 C-a-r-p-e-n-t-e-r. And I'm a member of the Proponents  
7 Committee and a grower.

8 ADMINISTRATIVE LAW JUDGE: From where?

9 MR. CARPENTER: From Sunnyside.

10 ADMINISTRATIVE LAW JUDGE: California?

11 MR. CARPENTER: Washington.

12 ADMINISTRATIVE LAW JUDGE: Washington.

13 Thank you.

14 MR. GASSELING: My name's Tom Gasseling. I'm a  
15 grower from Wapato, Washington. It's on the  
16 reservations so some people don't think it's part of  
17 Washington, but it's Washington State.

18 ADMINISTRATIVE LAW JUDGE: And would you  
19 spell the name of that for us?

20 MR. GASSELING: It's Tom, T-o-m, Gasseling,  
21 G-a-s-s-e-l-i-n-g.

22 ADMINISTRATIVE LAW JUDGE: And the place  
23 where you grow?

24 MR. GASSELING: Wapato, Washington.

25 ADMINISTRATIVE LAW JUDGE: Spelled?

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1 MR. GASSELING: W-a-p-a-t-o.

2 ADMINISTRATIVE LAW JUDGE: Thank you.

3 MR. D. DESSERAULT: I'm Duane Desserault.

4 D-u-a-n-e D-e-s-s-e-r-a-u-l-t. Grower from Mabton,  
5 Washington, M-a-b-t-o-n.

6 MR. BRULOTTE: Reggie Brulotte. R-e-g-g-i-e  
7 B-r-u-l-o-t-t-e. A grower from Toppenish, Washington.  
8 T-o-p-p-e-n-i-s-h.

9 ADMINISTRATIVE LAW JUDGE: Thank you.

10 MR. NEWHOUSE: Thank you. My name is Dan  
11 Newhouse. I'm also a grower from Sunnyside, Washington.  
12 My name is spelled D-a-n N-e-w-h-o-u-s-e. I'm also a  
13 member of the Proponents Committee.

14 ADMINISTRATIVE LAW JUDGE: Thank you. Now  
15 let's go to the table on the left side of the room, my  
16 right?

17 DR. JEKANOWSKI: I'm Mark Jekanowski.

18 ADMINISTRATIVE LAW JUDGE: It's a little  
19 faint.

20 DR. JEKANOWSKI: Mark...

21 UNKNOWN: Turn on the mike.

22 DR. JEKANOWSKI: There we go. All right.

23 Mark Jekanowski. I'm a agricultural economist with

24 Sparks Companies. My name is spelled M-a-r-k

25 J-e-k-a-n-o-w-s-k-i.

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1 ADMINISTRATIVE LAW JUDGE: All right. Is  
2 anyone else at your table expecting to speak, Mr.  
3 Jekanowski? Anyone at your table?

4 DR. JEKANOWSKI: I don't think so. No.

5 ADMINISTRATIVE LAW JUDGE: Oh, nobody's  
6 there.

7 DR. JEKANOWSKI: There's nobody there.

8 ADMINISTRATIVE LAW JUDGE: Nobody's there.

9 DR. JEKANOWSKI: You got me nervous there.

10 ADMINISTRATIVE LAW JUDGE: Mr. Moody.

11 MR. MOODY: He is the important guy. He  
12 gets his own table. Jim Moody. M-o-o-d-y. Washington,  
13 DC. Counsel for the Hop Marketing Order Opponents  
14 Group.

15 ADMINISTRATIVE LAW JUDGE: And just so that  
16 was clear for the record, Mr. Moody, you said Opponents.

17 MR. MOODY: Opponents.

18 ADMINISTRATIVE LAW JUDGE: Spelled  
19 o-p-p-o...

20 MR. MOODY: Yes. Maybe we just for --  
21 because it's easily confused name we ought to talk about  
22 it as pro and con or some easy nickname or something.

23 ADMINISTRATIVE LAW JUDGE: All right. And  
24 so what your clients are against are the proposals?

25 MR. MOODY: Yes.

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1 ADMINISTRATIVE LAW JUDGE: All right. And  
2 at your table?

3 MR. CARSWELL: Yes, Your Honor. My name is  
4 Matthew with two t's, E. Carswell, C-a-r-s-w-e-l-l. I  
5 am associate general counsel of Anheiser-Busch and we're  
6 con.

7 ADMINISTRATIVE LAW JUDGE: Thank you.

8 MR. CARSWELL: And no one else at your table,  
9 I believe, will be speaking.

10 ADMINISTRATIVE LAW JUDGE: All right.  
11 Thank you. All right. Our court reporter is Mark. And  
12 I would ask that the court reporter stop us at any time  
13 that we need to do something different in order to  
14 create a better record. I'm going to instruct the court  
15 reporter now and the people who will transcribe this  
16 tape, who are probably different people than anyone in  
17 this room, that the caption for this case -- first of  
18 all, the heading for the transcript should read "United  
19 States Department of Agriculture." And the second line,  
20 "Before the Secretary of Agriculture." Then the caption  
21 of the case should read IN re: And that's I-N r-e,  
22 colon, Hops Produced in Washington, Oregon, Idaho and  
23 California. The docket number over to the right side at  
24 the top of each page of new volume of the transcript  
25 should read Docket #AO-F&V-991-A3;FV03-991-01. Now of

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1 the exhibits that I'm sure will be introduced here there  
2 will be copies of the Federal Register that include that  
3 information, but I'm not going to have the exhibits sent  
4 to the court reporting service. I'm going to ask that  
5 counsel for the United States Government here today take  
6 possession of those if that would be convenient, Ms.  
7 Deskins, at the conclusion of the hearing and deliver  
8 those to the hearing clerk in Washington, DC.

9 MS. DESKINS: Yes, Judge Clifton. That would  
10 be fine. In fact, my colleague Anne Dec has some  
11 experience with doing that so that shouldn't be a  
12 problem. Right, Ann?

13 MS. DEC: Correct.

14 ADMINISTRATIVE LAW JUDGE: Excellent. Now,  
15 the court reporting service that is providing the  
16 transcript on which this Decision will be made is the  
17 York Stenographic Service in York, Pennsylvania. If  
18 there's anyone here who will want to order a copy of the  
19 transcript, hard copy and cassettes, little diskettes  
20 for the computer, you may do that just for the cost of  
21 reproduction, because the government has already paid  
22 the price for getting this hearing recorded and  
23 transcribed and that contract allows for any additional  
24 person asking for a copy of it to get it at \$.20 a page  
25 rather than the normal cost of ordering our transcript.

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1 I would ask at this point does the Government anticipate  
2 putting a copy of the transcript on a website or any  
3 such thing?

4 MS. DESKINS: Judge Clifton, yes, they do  
5 anticipate putting it on the website, but just in case  
6 they don't do that or people want it sooner than it goes  
7 on the website, they do have the option of ordering the  
8 transcript themselves or looking at it at the hearing  
9 clerk's office.

10 ADMINISTRATIVE LAW JUDGE: All right.  
11 Could everyone hear Ms. Deskins?

12 THE REPORTER: Please speak into the mike.

13 ADMINISTRATIVE LAW JUDGE: That's a good  
14 example. Ms. Deskins was being polite in facing me as  
15 she addressed me. We can't do that and still get the  
16 microphone to pick it up. So if you're a witness  
17 sitting right next to me don't look at me. And if the  
18 person questioning you would draw your face away from  
19 the mike don't look at them either. You really need to  
20 speak to the mike. Ms. Deskins, would you just repeat  
21 that for us please?

22 MS. DESKINS: Your Honor, we do anticipate  
23 putting it on the Internet website, however, if people  
24 want it sooner than when it's on the website, they do  
25 have the option of looking at the hearing clerk's office

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1 in Washington, DC. A copy of it will also be available  
2 at the Portland Field Office for the Agricultural  
3 Marketing Service here in Portland. But at this point,  
4 we do anticipate putting it on the web page.

5 ADMINISTRATIVE LAW JUDGE: All right. So  
6 you're welcome also to order your own copy of it if you  
7 want that. I want to give you the information for that.  
8 It's York Stenographic Services, 34 North George Street,  
9 York, Pennsylvania, 17401. The fax number is 717-854-  
10 0122. Now, that company does lots of transcripts, not  
11 all of which are subject to this government contract.  
12 So to make sure you're not charged the market price, you  
13 need to make it clear that you are ordering this as an  
14 additional copy based on a government contract and  
15 therefore your cost is \$.20 a page. You need to make  
16 that clear when you order the transcript. I do have a  
17 format here for ordering a transcript from York under  
18 this government arrangement. If you want a copy of that  
19 just see me and I'll provide that. You can even make  
20 your request with the court reporter here. But it  
21 should be done on their format. All right. I'd like to  
22 ask now if there are any other preliminary matters other  
23 than those we've done so far before we actually get into  
24 the substance of this hearing.

25 MS. DESKINS: Judge Clifton, I did have one  
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1 clarifying point. Mr. Moody had said that he represents  
2 opponents. Is that an opponents committee? Do they  
3 have members in it? Could he just specify is it a group  
4 of -- is it groups that are part of it?

5 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
6 Moody.

7 MR. MOODY: Yes. Thank you, Sharlene.  
8 It's a group of growers growing every day, but not  
9 limited to any specific membership. We have some people  
10 already identified who are going to be testifying, but  
11 there certainly may be other people who are against the  
12 Order that come forward that are as yet unaware to me.

13 ADMINISTRATIVE LAW JUDGE: All right. And  
14 there's no formal committee?

15 MR. MOODY: No.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
17 Moody, were you also about to mention something  
18 additional preliminary?

19 MR. MOODY: Yes, if Ms. Deskins is done.

20 ADMINISTRATIVE LAW JUDGE: Yes.

21 MR. MOODY: I have a couple things. One as  
22 to the timing of witnesses, we had a brief conference  
23 amongst several of the counsel. And I sort of achieved  
24 an informal agreement that the proponents would go first  
25 at each location, would spend about half of the time.

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1 But then the cons then would begin at that point with  
2 any of their testimony or others in the room who have  
3 not identified themselves as yet. And in addition to  
4 that general schedule, we know of other witnesses who  
5 can come just on one particular day and we would ask  
6 that they be accommodated on the day they're able to  
7 come and give their testimony at that point.

8 ADMINISTRATIVE LAW JUDGE: All right. Now  
9 that necessitates a bit of a timekeeper. I'll be happy  
10 to serve that function, but I want to know whether you  
11 anticipate right now that we'll need all three days this  
12 week and whether we're expecting to divide this week  
13 into a day and a half for the proponents and a day and a  
14 half for the cons.

15 MR. MOODY: My anticipation is, yes. I  
16 would defer to Brendan if he has any further thoughts on  
17 that.

18 MR. MONAHAN: Thanks, Jim. Brendan Monahan  
19 for the Proponents Committee. I hate to start out and  
20 disagree with you at the very outset, Jim. I'm not sure  
21 if we had an actual agreement to divvy it up 50/50. I'd  
22 say that the Proponents Committee, only over the course  
23 of the last couple of days, has put together a schedule,  
24 which I've handed to Your Honor. I think we're going to  
25 be able to stick to that schedule fairly closely. We

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1 would envision making it through item 4, which is a  
2 first round of hop producers in support of the proposal  
3 here in Portland. And I would agree, Jim, it makes  
4 sense for the Proponents Committee to certainly go first  
5 to complete its presentation and thereafter to hear from  
6 the opposition. In terms of trying to gauge how long  
7 that would take, Your Honor, that's going to be dictated  
8 in large part by the scope and breath of the questions  
9 that are presented to these witnesses. I believe that  
10 we could get through item four certainly by noon  
11 tomorrow unless there's some level of unanticipated  
12 questioning.

13 ADMINISTRATIVE LAW JUDGE: Mr. Monahan,  
14 that leaves three categories that would not even be  
15 commented on at all by proponents until we get to  
16 Yakima, Washington.

17 MR. MONAHAN: That's -- well, that's not  
18 entirely correctly, Your Honor. Number five is the  
19 economic justification and that's been scheduled for  
20 Yakima because that's where our expert is. That's where  
21 Mr. Folwell is. And in terms of scheduling a particular  
22 witness, I believe he's the only one with an actual  
23 constraint and inability to make it -- or unavailability  
24 to testify here in Portland.

25 ADMINISTRATIVE LAW JUDGE: And how is Mr.  
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1 Folwell's name spelled?

2 MR. MONAHAN: R-a-y-m-o-n-d, last name  
3 F-o-l-w-e-l-l. And just from a presentation standpoint  
4 it made sense, the Proponents believed, to have his  
5 testimony come at the tail-end after we had gone through  
6 the marketing order itself. Now, in terms of commenting  
7 on economic justification there will be some testimony  
8 regarding economic justification from a grower's  
9 perspective. And that's going to be right off the bat  
10 this morning when Mike Smith makes his presentation,  
11 Your Honor.

12 ADMINISTRATIVE LAW JUDGE: All right. And  
13 then the other two topics that you would be deferring  
14 until we reconvene in Yakima, Washington would be the  
15 Grower Referendum Procedures and the Hop Producer  
16 Support Proposal?

17 MR. MONAHAN: That's true, Your Honor,  
18 although you'll note that item four is also a Hop  
19 Producer Support Proposal. The thought would be to also  
20 allow growers in the Yakima region who are unable to  
21 travel to these Oregon proceedings to have an  
22 opportunity in Yakima to voice their support.

23 ADMINISTRATIVE LAW JUDGE: Mr. Moody, do  
24 you have any quarrel with responding with your second  
25 half here even though Proponents would not yet have put

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1 on, for example, their expert.

2 MR. MOODY: Well, we have some people who  
3 can only come here. And I just want to make sure they  
4 can get a chance to testify. And that's why we kind of  
5 suggested an even divvying up of the time. I know  
6 there's a gentleman here from the Beer Institute who  
7 needs to testify today. You know perhaps he could go as  
8 the first witness after lunch. Today is the only day  
9 he's able to come. So I don't have any objection to  
10 just stopping where we are with the Proponents'  
11 testimony approximately lunch tomorrow. You know  
12 there's just sort of -- you know, there just no real way  
13 to control the pace because the scope of cross-  
14 examination and the extent of it kind of depends on what  
15 the witnesses offer as far as their affirmative  
16 testimony.

17 ADMINISTRATIVE LAW JUDGE: All right.  
18 Let's not try to decide this in concrete now, but I'll  
19 be very aware of it as we go along. But I will keep  
20 track of time as far as how much time has been used by  
21 Proponents and how much time has been used by those  
22 presenting their position contrary to the proposals.

23 MR. MONAHAN: Also, Your Honor, for what it's  
24 worth, I think the way that it's going to break down is  
25 that the lion's share of the proposal of the evidence

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1 and testimony and support of the proposal will occur  
2 here in Portland and the presentation in Yakima will be  
3 much more limited, I believe.

4 ADMINISTRATIVE LAW JUDGE: All right. It  
5 sounds to me that we will need all three days here in  
6 Portland. Do you agree with that, Mr. Monahan?

7 MR. MONAHAN: I, of course, have no idea what  
8 the Opposition has in mind, but it wouldn't surprise me,  
9 Your Honor.

10 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
11 Moody, do you think we'll need all three days here in  
12 Portland?

13 MR. MOODY: Yes, Your Honor.

14 ADMINISTRATIVE LAW JUDGE: All right. With  
15 regard to Yakima, do you have any estimate just for  
16 planning purposes for those who are participating, Mr.  
17 Moody? Any idea whether we'll need all five days in  
18 Yakima next week?

19 MR. MOODY: Yes. I believe we will, Your  
20 Honor.

21 ADMINISTRATIVE LAW JUDGE: All right. All  
22 right. Any other preliminary matters? All right.  
23 Well, I'd like to take a 10-minute break before we begin  
24 with the evidence or opening statements or whatever you  
25 would have. Mr. Moody?

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1                   MR. MOODY:       If we're still doing  
2 preliminary matters, I have another preliminary matter.

3                   ADMINISTRATIVE LAW JUDGE:       All right.  
4 Thank you.

5                   MR. MOODY:       Okay. And thank you. And that  
6 is basically our request for the Court to take judicial  
7 notice of the hearing record and testimony from the 1984  
8 hearing record on amendments that eventually led to  
9 termination of the old program. A bit of brief  
10 background. We were first advised that that record had  
11 been destroyed, which came as somewhat of a surprise  
12 since this proposal has been pending at the Department  
13 since at least last December. It would be surprising to  
14 see the historical record of the proceeding that led to  
15 termination of the old program destroyed midstream.  
16 However, the hearing clerk's office was kind enough to  
17 go out to the archives in Sutland and retrieve the old  
18 record literally from the flames. And so that is  
19 available in the hearing clerk's office now. And  
20 because USDA is essentially trying to reestablish a  
21 program on the basis of a record hearing they  
22 terminated, the evidence presented at that proceeding  
23 and then setting forth the conditions justifying  
24 terminating is highly relevant to this proceeding  
25 because it's kind of a classic arbitrary decision for an

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1 agency to just reverse course without incurring a heavy  
2 burden in justifying that reversal. So we would ask  
3 that the Court take judicial notice of the record and  
4 evidence and testimony from that '84 proceeding.

5 ADMINISTRATIVE LAW JUDGE: Mr. Moody, I'm  
6 very glad that you brought this issue up at the  
7 beginning so people can ponder it, but I'm going to ask  
8 you to renew that motion in the evidentiary portion of  
9 the proceeding.

10 MR. MOODY: Okay. Thank you.

11 ADMINISTRATIVE LAW JUDGE: You're welcome.  
12 All right. Let's take a 10-minute break, if you will,  
13 and be back ready to go at 9:51. Thank you.

14 \*\*\*

15 [Off the record.]

16 [On the record.]

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE: We're back on  
19 record now at 9:53. One other comment about the way  
20 we'll handle exhibits. When you identify an exhibit  
21 we'll give it a number. And if you already have some  
22 pre-marked let me know that know. Does anybody -- has  
23 anybody marked exhibits ahead of time with any numbers?  
24 Okay. Not yet. Mr. Moody.

25 ADMINISTRATIVE LAW JUDGE: Yes, Your Honor.

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1 I don't know if Sharlene had planned to do this already  
2 but...

3 THE REPORTER: Turn on the mike.

4 ADMINISTRATIVE LAW JUDGE: Is the mike on?

5 THE REPORTER: The switch on the top.

6 MR. MOODY: I don't know if Sharlene had  
7 done this already but there's two things, I guess, that  
8 probably need to be exhibits and one is the Notice of  
9 Hearing with proposals and the data table assembled by  
10 USDA. There's lots of copies of those floating around  
11 but I don't know if they're going to be formally made  
12 exhibits. They could be one and two. The other  
13 question I had is to make sure that the transcript is  
14 numbered sequentially and doesn't start over at one  
15 every day.

16 ADMINISTRATIVE LAW JUDGE: Good. Thank  
17 you. I meant to mention that. I will mention that each  
18 day when we start. This will be volume I of the  
19 transcript. Each day is a separate volume, but the  
20 pages should be sequential so that there's never another  
21 page one even though we'll have three days this week and  
22 five days next week. Also, while we're making this  
23 transcript, I'm going to ask the court reporter to  
24 change tapes when it's nearly 45 minutes after we've  
25 begun a new tape and ask him to gauge when might be a

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1 good time to interrupt the speaker. So when the court  
2 reporter asks you to stop, please stop right there,  
3 gather your thoughts, because I'd like you to start that  
4 sentence again when we've got the new tape in the  
5 machine. All right. Ms. Deskins, do you have in mind  
6 to introduce the exhibits that Mr. Moody mentioned?

7 MS. DESKINS: Yes. That was my intention.

8 ADMINISTRATIVE LAW JUDGE: All right.  
9 Let's begin then with what the Government would like to  
10 mark as exhibits and have accepted into evidence and  
11 anything else the Government would like to present  
12 before the proponents go forward.

13 MS. DESKINS: Thank you, Judge Clifton. The  
14 first thing we'd like to introduce, it's a copy of the  
15 Notice of Hearing for this. And I'd just like to point  
16 out that there was one that was published in -- I'm  
17 looking for the day -- July 28, 2003 and there was also  
18 another one that was published on August 14. I'm going  
19 to hand them to the court reporter. And also, I'd just  
20 like to note...

21 ADMINISTRATIVE LAW JUDGE: Now, also,  
22 Ms. Deskins, the one that actually had today's dates in  
23 it, I have copies of that. That's the September 8...

24 MS. DESKINS: Right. There's also September  
25 8.

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1 ADMINISTRATIVE LAW JUDGE: ...2003.

2 MS. DESKINS: And there's a slight error I  
3 wanted to point out in the September 8 notice, which is  
4 Proposal #10, should actually be Proposal #11.

5 ADMINISTRATIVE LAW JUDGE: Thank you. Are  
6 you going to just pencil through that on the one that  
7 we'll make of record?

8 MS. DESKINS: Yes.

9 ADMINISTRATIVE LAW JUDGE: If you would do  
10 that, pencil through the 10, mark 11.

11 MS. DESKINS: Actually I'm going to mark it  
12 in ink.

13 ADMINISTRATIVE LAW JUDGE: Good.

14 MS. DESKINS: Okay. And let me give one copy  
15 to the court reporter.

16 ADMINISTRATIVE LAW JUDGE: Please. Now, is  
17 all of that one exhibit?

18 MS. DESKINS: Yes. It is.

19 ADMINISTRATIVE LAW JUDGE: Thank you. So I  
20 would ask the court reporter then to mark that as  
21 Exhibit 1 and I'd like the court reporter to retain  
22 custody of all these exhibit until we conclude here in  
23 Portland because he can hand them to the witnesses that  
24 might be asked to testify about them. And then only  
25 when we're ready to leave Portland will he turn over

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1 custody of those to Ms. Dec.

2 MS. DESKINS: Judge Clifton, I have some  
3 other exhibits as well.

4 ADMINISTRATIVE LAW JUDGE: All right.

5 MS. DESKINS: The next one I have is the  
6 Certificate of Official Notice. And I'm going to hand a  
7 copy to the court reporter and I'd like it marked as  
8 Exhibit 2.

9 ADMINISTRATIVE LAW JUDGE: All right. And  
10 the actual title to that document is Certificate of  
11 Officials Notified.

12 MS. DESKINS: And Judge Clifton, I have  
13 another exhibit. Okay. It would be marked -- I want it  
14 marked as Exhibit #3 and it's a Certificate of Mailing.  
15 And it certifies that interested persons have been  
16 notified by it. I'm going to hand a copy to the court  
17 reporter. Judge Clifton, there's a fourth exhibit we'd  
18 like to put in and Ms. Razick is going to do that one.

19 MS. RAZICK: Your Honor, I would like to  
20 admit certificate regarding making news releases  
21 available to local newspapers, television and radio  
22 stations as Exhibit 4.

23 ADMINISTRATIVE LAW JUDGE: You may. And if  
24 you'll hand that to the court reporter.

25 MS. DESKINS: Judge Clifton, I would move for  
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1 the admission of those four exhibits.

2 ADMINISTRATIVE LAW JUDGE: Are there any  
3 objections to the admission into evidence of Exhibit 1,  
4 Exhibit 2, Exhibit 3 or Exhibit 4? There being none,  
5 those four exhibits are hereby admitted into evidence.

6 MS. DESKINS: Judge Clifton, at this time we  
7 do have a witness that we'd like to call. It's Dr.  
8 Donald Hinman.

9 ADMINISTRATIVE LAW JUDGE: You may be  
10 seated and then I'll place you under oath. Please again  
11 state your full name and spell it.

12 MR. HINMAN: My name is Donald Hinman.  
13 D-o-n-a-l-d H-i-n-m-a-n.

14 ADMINISTRATIVE LAW JUDGE: All right. And  
15 I assume your doctorate is a Ph.D.

16 DR. HINMAN: That is correct.

17 ADMINISTRATIVE LAW JUDGE: In what field?

18 DR. HINMAN: Agricultural economics.

19 ADMINISTRATIVE LAW JUDGE: All right.  
20 Would you raise your right hand please?

21 \*\*\*

22 [Witness sworn]

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: Thank you.  
25 Ms. Deskins, you may proceed.

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DONALD HINMAN,

having first been duly sworn, according to the law,  
testified as follows:

BY MS. DESKINS:

Q. Dr. Hinman, could you please tell us what  
your office address is?

A. U.S. Department of Agriculture, 1400  
Independence Avenue Southwest, Washington, DC, 20250-  
0241.

Q. And other than your doctorate do you have  
any other higher educational degrees?

A. A master's degree in the same subject,  
agricultural economics.

Q. Okay. And do you have any other degrees?

A. A bachelor's degree in political science  
and economics.

Q. Okay. Can you tell us a little bit about  
your work history since college?

A. Since undergraduate work?

Q. Well, no. After you graduated from  
college, could you just briefly tell us about your work  
experience?

A. Okay. I had worked for the USDA for five  
years briefly for the Economic Research Service, then

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1 for the Federal Milk Market Administrator in Boston,  
2 Massachusetts. Then several years in the Peace Corps,  
3 volunteer in West Africa in Cameroon, followed by  
4 graduate school. And then I resumed a -- after graduate  
5 school a work history with a -- working for Michigan  
6 State University where I did my graduate work doing  
7 teaching and research. And then I did the same thing,  
8 teaching, research and extension at the University of  
9 Wisconsin in Superior.

10 Q. Okay. And can you tell us what your  
11 current position is?

12 A. I'm an economist with the Economic  
13 Analysis Program and Planning Branch, Fruit and  
14 Vegetable Programs, AMS.

15 Q. And how long have you had that position?

16 A. Since June 2001.

17 Q. Okay. And AMS stands for Agricultural  
18 Marketing Service. Correct?

19 A. Agricultural Marketing Service.

20 Q. As part of your job duties, did you do  
21 anything for this particular hearing?

22 A. Yes. I prepared a statistical summary,  
23 which has been, I believe, you know, distributed  
24 throughout the room.

25

\*\*\*

1 MS. DESKINS: Okay. Judge Clifton, I would  
2 like to have that marked as this time as I believe we're  
3 on Exhibit #5.

4 ADMINISTRATIVE LAW JUDGE: Correct.

5 MS. DESKINS Okay. It's now been marked as  
6 Exhibit #5. Can you -- do you have a statement that  
7 you'd like to read us about the exhibit?

8 DR. HINMAN: Yes.

9 MS. DESKINS: Okay. Please proceed.

10 DR. HINMAN: I compiled this statistical  
11 summary from four USDA source, the National Agricultural  
12 Statistics Service or NASS and the NASS state counter  
13 parts in Idaho, Oregon and Washington, second, Hops  
14 Market News published by the Agricultural Marketing  
15 Service, three, the Foreign Agricultural Service and  
16 four, the Economic Research Service. I also drew on  
17 data from the Department of Commerce and this  
18 compilation includes 12 tables and several graphs. And  
19 I will actually walk through this document page by page  
20 indicating the certain tables.

21 ADMINISTRATIVE LAW JUDGE: Let me stop you  
22 just a moment. Is there anyone in the room who does not  
23 have access to this report? Do all of you have a copy  
24 that want a copy? Okay. Is there anyone else who would  
25 like a copy of the report? Dr. Hinman, you may begin.

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1 DR. HINMAN: I'll be going through this and  
2 indicating the page numbers and table numbers. On page  
3 1, Table 1 presents acreage yield production, season  
4 average grower price and value of production. Two  
5 graphs on page 2 compare yield to production and acreage  
6 to production. The data on the graphs indicate that the  
7 variability in production is due more to changes in  
8 acreage than to changes in yield. Average yields have  
9 been above 1,500 pounds per acre since 1950. The lowest  
10 yield in the last 10 years was 1625 in 1998. Yields  
11 have been above 1800 pounds since 1999 and reached 1990  
12 in 2002. Over the last 20 years, production has ranged  
13 as low as 49 million pounds in 1986 and was nearly 79  
14 million pounds in 1995. Hops were harvested on 25,000  
15 acres in 1986 and peaked at over 44,000 acres. I think  
16 I made a -- I'm pausing here for a minute because I  
17 think I may have, in my statement here, not gotten the  
18 acreage address here -- number. Yeah. Okay. Hops were  
19 harvested in 25,000 acres in 1986 and peaked at over  
20 44,000 acres in 1996. Have rested acres declined  
21 significantly in 1998 and again in 2002? Production was  
22 58 million pounds in 2002 when it was valued at 113  
23 million dollars. Seasoned average grower price per  
24 pound average \$1.76 over the last 10 years and \$1.82  
25 over the last five years. Turning then to pages 3 and

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1 4, Table 1A presents inflation adjusted grower prices  
2 from Table 1. Now continuing to page 5. On page 5,  
3 Table 2 shows production levels, acreage and yields in  
4 each of the three hops producing states, Idaho, Oregon  
5 and Washington. Over the past five years, the share of  
6 production has average 76 percent for Washington, 17  
7 percent for Oregon and 8 percent for Idaho. Acreage  
8 shares have averaged 73 percent, 17 percent and 10  
9 percent. Average yield has been 1933 pounds for  
10 Washington, 1748 for Oregon, 1401 for Idaho. Turning to  
11 page 7, on page 7, Table 2A provides acreage data back  
12 to 1950, an historical overview. California was the  
13 number one state -- number two state in terms of acreage  
14 until the mid early-1960's but production declined to  
15 the point where California data was no longer published  
16 by the mid-1980's. Turning to page 9. Table 3 shows  
17 hop stocks and a notable trend over the last 25 years  
18 has been the increasing quantities of stocks held by  
19 dealers and growers. Dealer/grower stock exceeded  
20 stocks held by brewers in 2002. Page 10, Table 4  
21 presents the hops varieties for which acreage, yield and  
22 production data were published in 2002. The top five  
23 varieties accounted for 65 percent of total U.S.  
24 production in 2002. On pages 11 and 13, Tables 5 and 6  
25 show the production and acreage since 1996 of each

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1 variety of hops for which published data is available.  
2 Columbus Tomahawk is the variety with the largest  
3 production with 10.5 million pounds in 2002, 18 percent  
4 of the total. Willamette [ph] is the variety with the  
5 most acreage, 5766 acres in 2002. And following Tables  
6 5 and 6, on pages 12 -- let's see now -- on pages 12 and  
7 14 are additional tables, which show production and  
8 acreage by variety in each state. Turning to Table 7 on  
9 page 15. This table shows supply and utilization.  
10 Production plus carriage stocks plus imports sum to the  
11 figure -- the column called "Total supply." In the  
12 columns labeled "Utilization," the sum of brewery usage  
13 plus exports plus carry out stocks plus a statistical  
14 adjustment known as the balancing item. Domestic usage  
15 in the third to the last column is computed by  
16 subtracting imports from brewery usage. Over the time  
17 period shown, domestic usage of U.S. hops has average 42  
18 percent and approximately 58 percent has been exported.  
19 This data, however, should be viewed with caution. The  
20 size of the balancing item shows that comparing supply  
21 and demand has some error associated with it. The table  
22 ends in 1996 after which brewery usage and the balancing  
23 item were no longer published in AMS Hops Market News.  
24 On page 16, Table 8, presents the annual parity price  
25 for hops since 1998 along with season-average grower

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1 price. On page 17, Table 9, shows the value of hop  
2 exports and imports, showing an increasing gap between  
3 the value of exports when compared to imports. And on  
4 pages 18, 19 and 20, Table 10 presents the value of  
5 exports by country. Table 11, on page 21, shows the  
6 value of U.S. imports by region and country. On page 22  
7 is Table 12, which presents a summary of annual exchange  
8 rates, comparing the U.S. to an average of foreign  
9 currencies for all our trading partners from 1970 to  
10 2003. 2003 is a projection. And into the summary, I'm  
11 also submitting an additional eight-page compilation  
12 which has no hops data associated with it as a  
13 compilation of exchange rates from which all countries  
14 with which the U.S. trades agricultural products.

15 MS. DESKINS: Judge Clifton, I have a copy of  
16 that I'd like to give to the court reporter.

17 ADMINISTRATIVE LAW JUDGE: Yes. Please.

18 MS. DESKINS: Judge Clifton, I have one more  
19 copy of that if someone wants it or if people want to  
20 share it and look at it.

21 ADMINISTRATIVE LAW JUDGE: Does Mr. Moody  
22 have one?

23 DR. HINMAN: And that concludes my  
24 statement.

25 MS. DESKINS: Judge Clifton, I would like to  
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1 have that last one marked as Exhibit #6.

2 ADMINISTRATIVE LAW JUDGE: All right. And  
3 Exhibit 6 is the detail from which page 22 of Exhibit 5  
4 was prepared. Am I correct, Dr. Hinman?

5 DR. HINMAN: Yes. No. No. Actually --  
6 well, it is the basis of it in the sense that Table 12  
7 is done by the Economic Research Service of the USDA and  
8 they take what they call the bilateral exchange rates  
9 from the additional exhibit and they weight them  
10 according to the amount of trade, compute this sort of  
11 annual summary that reflects the overall exchange rates  
12 for all of our trading partners.

13 ADMINISTRATIVE LAW JUDGE: Thank you.

14 \*\*\*

15 BY MS. DESKINS:

16 Q. Dr. Hinman, you did not prepare #6.  
17 Correct?

18 A. I did not. This was basically obtained  
19 from the Foreign Agricultural Service and printed out  
20 for this purpose.

21 Q. Okay. So it's a reference guide of how  
22 you -- it's a reference guide of what the exchange rates  
23 are.

24 A. That is correct.

25 Q. Dr. Hinman, in regards to Exhibit #5,  
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1       you've had a chance to look at it now. Is it correct to  
2       the best of your knowledge?

3               A.    Yes.

4               Q.    And you prepared all of Exhibit #5?

5               A.    Yes.

6               Q.    And in regards to Exhibit #6, that's  
7       information that you obtained from the Foreign  
8       Agricultural Service.

9               A.    That is correct.

10              Q.    And Foreign Agricultural Service is part  
11       of the United States Department of Agriculture?

12              A.    That is correct.

13              Q.    Okay. At this time, Judge Clifton, I  
14       would move for the admission of 5 and 6.

15                               \*\*\*

16              ADMINISTRATIVE LAW JUDGE:       Mr. Moody, would  
17       you like to be heard.

18              MR. MOODY:       I just have a couple of  
19       questions about the data.

20              ADMINISTRATIVE LAW JUDGE:       All right. You  
21       may voir dire the witness.

22                               \*\*\*

23                               VOIR DIRE

24              BY MR. MOODY:

25              Q.    Thank you. Dr. Hinman, on your Table #1,  
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1 I think you went by it kind of fast. I didn't get this  
2 down. But you say with a 10-year average grower price  
3 you had the last 10 years and the 10 years previous to  
4 that.

5 A. No. It was -- the first figure was 10  
6 years and then the second figure was five years.

7 Q. Okay. So the first figure was '92 to  
8 '02.

9 A. Correct.

10 Q. And what's that figure?

11 A. \$1.76. And the last five years is \$1.82.

12 Q. And that's a weighted average grower  
13 return?

14 A. No. Simple average of the prices that  
15 appear here.

16 Q. So a simple average.

17 A. Yes.

18 Q. Not weighted by total production.

19 A. Not weighted by total production of each  
20 year. Just a simple average of the prices that appear  
21 five and 10 years back.

22 Q. All right. On your parity price table,  
23 which I think is Table 8, is there any particular reason  
24 you only included the last five years on that table  
25 rather than going back, as many of your other tables do,

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1 to 1945?

2 A. I thought for purposes of this hearing  
3 this was an adequate record showing the relationship  
4 between parity price and season average grower price.

5 Q. Okay. Do you have data back to 1945?

6 A. It could be obtained. It would not be  
7 easy to do that here.

8 Q. Okay. It's just that the reason I ask  
9 the question is because one of the authorized purposes  
10 of the Statute is to raise prices to parity, and so I  
11 think it would be very useful to have the side-by-side  
12 comparison of the actual grower price and the parity  
13 price back -- as your other tables do, back to 1945.  
14 And I wondered if you'd be willing to -- not today, of  
15 course -- but obtain that data for the record so we can  
16 have all of our historical snapshots be kind of covering  
17 the same period of time.

18 A. Let me ask a procedural question. Could  
19 this be submitted in the post-hearing process?

20 \*\*\*

21 MS. DESKINS: No. It would have to be during  
22 the public hearing.

23 DR. HINMAN: Okay.

24 MR. MOODY: So it would be like before next  
25 Friday.

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1 DR. HINMAN: I will attempt to obtain that.

2 MR. MOODY: All right.

3 DR. HINMAN: I cannot guarantee it.

4 ADMINISTRATIVE LAW JUDGE: Any other voir  
5 dire questions, Mr. Moody?

6 MR. MOODY: Thank you, Dr. Hinman.

7 ADMINISTRATIVE LAW JUDGE: All right. Any  
8 voir dire questions from anyone else?

9 \*\*\*

10 BY MR. CARSWELL:

11 Q. Yes. Matt Carswell, Your Honor. If I  
12 could refer you to Table 3, Dr. Hinman, you reference  
13 this table, I believe, showing a trend in stocks held by  
14 dealer/growers. And I was just wondering if you would  
15 also indicate that there seems to be a trend of lower  
16 stocks held by brewers based on the numbers shown.

17 A. Yes. I acknowledge that.

18 Q. Finally, on Table 11, this is information  
19 about the value of imports into the U.S. And I was just  
20 wondering if you have information showing foreign trade  
21 outside the U.S., in other words, exports from third-  
22 party countries to other third-party countries?

23 A. I believe that data is available. Again,  
24 would you like that submitted for the record?

25 Q. If possible.

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1           A.    Okay.  I will -- again, I will review  
2   that.  My intent in this record was to focus on the U.S  
3   trading position.  I will attempt to find the other  
4   data.

5           Q.    I believe it would be relevant.  Thank  
6   you, sir.

7           A.    Thank you.

8                               \*\*\*

9           ADMINISTRATIVE LAW JUDGE:     Any other  
10   questions about these exhibits?  Is there any objection  
11   to the admission into evidence of either Exhibit 5 or  
12   Exhibit 6?  There being none, Exhibits 5 and 6 are  
13   hereby admitted into evidence.

14          MS. DESKINS:   Judge Clifton, I have no  
15   further questions for this witness.

16          ADMINISTRATIVE LAW JUDGE:     All right.  
17   Would anyone like to cross-examine this witness?  Mr.  
18   Moody.

19                               \*\*\*

20                               CROSS-EXAMINATION

21          BY MR. MOODY:

22          Q.    Dr. Hinman, thank you.  You said you are  
23   presently with Economic Evaluation Branch at AMS?

24          A.    Economic Analysis and Program Planning  
25   Branch.

                              York Stenographic Services, Inc.  
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1 Q. Yeah. And that's...

2 A. Fruit and Vegetable Programs,  
3 Agricultural Marketing Service.

4 Q. All right. Have you performed an  
5 analysis of any of the data you've prepared here to look  
6 at, for example, price variability during the old orders  
7 compared to the time between the old orders and now?

8 A. I have not.

9 Q. Have you performed any kind of economic  
10 analysis concerning the questions listed in the Federal  
11 Register?

12 A. I have not.

13 Q. Are you aware of anybody else in the  
14 department who's performed any economic analysis of the  
15 hops industry?

16 A. I'm not aware of anyone.

17 Q. Okay. Thank you very much, Dr. Hinman.  
18 Excuse me. I have one other question. What position do  
19 you have regarding the question of what degree of supply  
20 and price fluctuation is deemed reasonable under the  
21 AMAA?

22 A. I don't think I could put a fixed number  
23 on it. It varies by crop and I would not be able to  
24 state one for this crop.

25 Q. Okay. Can you state a methodology for  
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1       how such reasonable fluctuation would be determined?

2               A.    I guess I -- we could compute a  
3       fluctuation of various prices and then compare them, but  
4       I do not know the specific methodology to decide what is  
5       a reasonable fluctuation and what would not be.

6               Q.    All right. Do you have an opinion as to  
7       whether a price variation since termination of the old  
8       order have been reasonable or unreasonable?

9               A.    I have no opinion.

10              Q.    All right. Thank you, Dr. Hinman.

11                               \*\*\*

12              ADMINISTRATIVE LAW JUDGE:       Mr. Carswell.

13              MR. CARSWELL: Thank you, Your Honor. We have  
14       some data that indicates that Table 5C, which reflects  
15       Idaho hop production, may be inaccurate. And I would  
16       just request, Dr. Hinman, if you could check these  
17       numbers. Our indications are that it would be instead  
18       of 3399 it would be more like 55 -- the number we have  
19       is 5519. And so I just request if you could check those  
20       numbers and confirm their accuracy.

21              DR. HINMAN: Thank you. I will do so.

22              MR. CARSWELL: And you have it different  
23       earlier -- you have it correct earlier, which indicates  
24       these numbers are incorrect.

25              DR. HINMAN: Thank you.

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1 ADMINISTRATIVE LAW JUDGE: Dr. Hinman, are  
2 you clear or do you want to take notes on what it is  
3 that Mr. Moody has requested you provide by the end of  
4 the hearing or what Mr. Carswell has requested that you  
5 provide?

6 DR. HINMAN: Mr. Carswell asked that there  
7 be additional international trade data basically between  
8 third-party countries from other exporters/ importers to  
9 other exporter/importers, not the U.S. Do you have any  
10 specific time period? Would this time period on these  
11 tables be adequate?

12 MR. CARSWELL: Yes, sir.

13 DR. HINMAN: Okay. And then...

14 ADMINISTRATIVE LAW JUDGE: And with regard  
15 to Mr. Moody's request.

16 DR. HINMAN: He asked for a computation of  
17 parity prices going back considerably farther. And  
18 actually, Mr. Moody, maybe you could state for the  
19 record how far back you would like that record to go?

20 MR. MOODY: Your other tables go back to  
21 1945 so that's fine or another time period would be the  
22 beginning of the old order, which I think was 66. 1945  
23 if you got -- I think those -- I've seen USDA reports  
24 that go back that far. So I think you can get it from  
25 1945.

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1 MS. DESKINS: Judge Clifton, I mean if Mr.  
2 Moody has access to that information I think it would be  
3 easier for him to get than to try to get Mr. Hinman to  
4 do that because he is supposed to be here during the  
5 hearing to listen to the evidence that's presented. And  
6 I don't know that he'd have time to get -- if Mr. Moody  
7 does have it, then he could put that into the record.

8 MR. MOODY: Right. No. Actually, I had  
9 seen -- the older, historical reports I had seen for  
10 other commodities. I don't know what source Mr. -- Dr.  
11 Hinman would have for hops. I'm assuming somebody in  
12 his office or ERS would have that data and could just  
13 fax it out here.

14 ADMINISTRATIVE LAW JUDGE: I would ask Dr.  
15 Hinman to make a reasonable attempt to get the  
16 information that's requested. We know there's no  
17 guarantee, Dr. Hinman, that you'll be able to. And I do  
18 want you in here during the proceedings so that limits  
19 you as well. Yes. Mr. Carswell.

20 MR. CARSWELL: I'm sorry. We're kind of going  
21 back and forth on you. I apologize for that. It's been  
22 told to me, Dr. Hinman, that on Table 5C that number  
23 3399 is actually the acreage number and that the 5519 is  
24 the correct production number that you've indicated  
25 elsewhere. Just to help you and because we can't talk

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1 to you off the record.

2 DR. HINMAN: Okay. Thank you. I will make  
3 that correction.

4 ADMINISTRATIVE LAW JUDGE: Is there any  
5 further cross-examination of this witness? Yes, sir.

6 \*\*\*

7 BY DR. JEKANOWSKI:

8 Q. Mark Jekanowski. I'm with Sparks  
9 Companies. Dr. Hinman, can you go into any more detail  
10 or give a brief explanation as to why Table 7, the data  
11 series, stops at 1996?

12 A. I was relying on my sources, AMS Hops  
13 Market News. And after that point they no longer  
14 published. If you obtain copies of Hops Market News at  
15 that point onward they do not publish this figure  
16 brewery usage or a balancing item. So it was no longer  
17 possible to make a computation of this nature.

18 Q. Any idea why they no longer published  
19 that?

20 A. Not entirely sure. I believe it's a  
21 combination of -- that the -- the brewery usage figure I  
22 think is -- at some point I believe the brewery  
23 reporting became voluntary is my understanding so that  
24 made some of the figures less available. And I believe  
25 it also has to do with a backlog of work at the AMS

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1 office.

2 Q. Wouldn't data such as this be critical if  
3 somebody were to try to forecast supply or demand in  
4 your opinion?

5 A. It would be helpful if this data  
6 continued. I notice that the AMS Market News says that  
7 they will no longer publish the balancing item. And I  
8 think some of the other data is just not available or  
9 not up to date. So it would be helpful. It's just not  
10 available in a published source that I could obtain it.

11 Q. What exactly is the balancing item?

12 A. It is a figure, as I understand it, that  
13 represents when they do a table like this, the AMS  
14 Market News, for years, published a table where they  
15 added up supply and demand in this nature and they found  
16 that there was a difference in the result and that  
17 difference they labeled the balancing item. So it was  
18 an acknowledgement of the fact that the data was  
19 imperfect.

20 Q. So would you call it error basically?

21 A. Yes. An error in computation but it's  
22 error of -- really in an unknown direction.

23 Q. Sure. But it's pretty clear that in some  
24 years there's a huge amount of error as a proportion to  
25 the production...

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1 A. Yes.

2 Q. ...or carry in stocks.

3 A. I did acknowledge. These figures and any  
4 percentage should be used with caution. I computed them  
5 because I thought it would be indicative and helpful,  
6 but the data should be used with caution for that very  
7 reason.

8 Q. I'm finished, Your Honor.

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Are there any  
11 other cross-examination questions for this witness?  
12 There being none, is there any redirect examination, Ms.  
13 Deskins?

14 MS. DESKINS: No further questions.

15 ADMINISTRATIVE LAW JUDGE: All right.  
16 Thank you, Dr. Hinman. You may step down. Ms. Deskins.

17 MS. DESKINS: We have no further witnesses.

18 ADMINISTRATIVE LAW JUDGE: All right. I  
19 have not counted this time as the Proponents' time. It  
20 was the Government's time. I'll now begin to count the  
21 Government's time. It's approximately 10:30. It's  
22 10:28. And the government may proceed. Excuse me. The  
23 Proponents may proceed.

24 MR. MONAHAN: Thank you, Your Honor. Brendan  
25 Monahan for the Proponents Committee. Your Honor, I

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1 represent the proponents of the Hop Marketing Order.  
2 The persons assembled at the two tables to my left are  
3 indeed the members of the Proponents Committee. They're  
4 the folks that have worked the last two years to try to  
5 fashion a solution for the oversupply and other  
6 marketing conditions that are facing the Hop industry.  
7 Each one of these committee members is going to make the  
8 long trek up to the witness stand today and to offer  
9 testimony in support of the proposal. The first two  
10 witnesses are going to be Mr. Carpenter and Mr. Smith.  
11 They're going to offer primarily historical information,  
12 what the Hop industry has done over the last two years  
13 that brings us to today's stage where we actually have a  
14 formal order that is being proposed, the other efforts  
15 that were made before we got to today. Mr. Smith is  
16 going to talk a little bit about the economic and  
17 marketing conditions that face the members of the  
18 industry, mainly from a grower's perspective. After  
19 that, we're actually going to go through the marketing  
20 order provision by provision. And we've taken a  
21 teamwork approach, Your Honor. We've divvied it up.  
22 Different committee members are going to be speaking in  
23 support or rather discussing specified provisions in the  
24 proposal. One thing -- just a point of order, Your  
25 Honor had asked that witnesses take the chair to your

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1 left. And that seems entirely appropriate. When there  
2 is cross-examination however, Your Honor, there are  
3 members of the committee who are perhaps better versed  
4 in certain areas of the verbiage in the proposal, and I  
5 would ask with, Your Honor's permission, that in the  
6 event of cross-examination that the questions be  
7 proposed to the committee itself as there may be someone  
8 who is not carrying the torch for a particular provision  
9 in the witness chair at a given time.

10 ADMINISTRATIVE LAW JUDGE: All right. I'll  
11 reserve judgment on that request, Mr. Monahan. It could  
12 be useful for cross-examination to be directed to the  
13 witness who's just spoken, for example, if he is unaware  
14 of certain facts that might change his opinion and the  
15 like. So those of you who wish to cross-examine, if you  
16 have a question that is specific to the witness you can  
17 say so. If you have a question that you just like to  
18 have answered by the committee, you may say so. And Mr.  
19 Monahan, at any time, you may alert me that perhaps a  
20 better answer could be obtained from the committee. But  
21 I'll rule step-by-step as we go.

22 MR. MONAHAN: Thank you, Your Honor.

23 ADMINISTRATIVE LAW JUDGE: You're welcome.

24 MR. MONAHAN: Your Honor, just to also a  
25 point of order, many of the witnesses have prepared

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1 written statements. Those written statement vary in  
2 their degrees of complexity and comprehensiveness. Some  
3 of them are verbatim and the witnesses will be reading  
4 from those written statements. Others are more of a  
5 bullet point outline written statement. What we  
6 envision is at the conclusion of the Proponents'  
7 testimony to offer those written statements as evidence  
8 as a supplement to the verbal testimony that's offered,  
9 Your Honor.

10 ADMINISTRATIVE LAW JUDGE: And I accept  
11 those. I think that's very helpful. It's always a  
12 little problematic if the witness said something  
13 different from what's written because we don't know  
14 which version is the more correct. So if at any point  
15 your witnesses stumble or notice something in the  
16 written statement that they're saying different because  
17 they've updated it it will help if they either back up  
18 and go over what they're saying, strike that, for  
19 example, and read it again correctly or identify that  
20 they are changing what's in the written document so that  
21 we'll know which to rely on. But I have no objection to  
22 having that information in the record twice, that is in  
23 the transcript and as an exhibit.

24 MR. MONAHAN: Thank you, Your Honor. With  
25 that, what we're envisioning is really an informal

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1 presentation. I will not be making advocate's speeches.  
2 I will not be conducting direct examinations. It's just  
3 going to be a -- really follow-up on the grass roots  
4 approach that brought us to today's presentation, Your  
5 Honor.

6 ADMINISTRATIVE LAW JUDGE: All right.  
7 Thank you, Mr. Monahan. Before you begin, Mr. Moody.

8 MR. MOODY: Thank you, Your Honor.  
9 Brendan, can we have those written statements before  
10 they begin their testimony so we can save time on cross-  
11 examination?

12 MR. MONAHAN: Your Honor, in reading through  
13 the CFR regulations that govern the submission of  
14 written statements, I advised and instructed each member  
15 of the committee to bring four copies of their written  
16 statements. And I'll do a little head check now to see  
17 how many people follow our rules. How many people here  
18 have written statements? I'll gather those right now,  
19 Your Honor.

20 ADMINISTRATIVE LAW JUDGE: All right.  
21 Good. Let's go off record and everyone in the room may  
22 take a stretch break for five minutes while we do this  
23 distribution.

24 \*\*\*

25 [Off the record.]

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1 [On the record.]

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: We're back on  
4 record now at 10:48. Mr. Monahan, you may proceed.

5 MR. MONAHAN: Thank you, Your Honor. While  
6 we were off the record I pre-marked Exhibits 7 through  
7 14 and I have provided copies to the court reporter, to  
8 general counsel and to Mr. Moody. I would like just to  
9 take a moment and identify what those exhibits are  
10 before we proceed with the oral testimony.

11 ADMINISTRATIVE LAW JUDGE: You may.

12 MR. MONAHAN: Exhibit 7 is the -- are the  
13 remarks of Mr. Carpenter -- Steve Carpenter, who will be  
14 the first witness. Exhibit 8 is actually deferred or  
15 reserved, Your Honor. We would ask to be able to  
16 supplement the record tomorrow with a hard copy printout  
17 of the slide presentation that Mr. Smith will be making  
18 in a few moments. Exhibit 9 are the comments of Ken  
19 Desserrault. Exhibit 10, comments of Dan Newhouse.  
20 Exhibit 11 is the presentation of Reggie Brulotte.  
21 Exhibit 12, presentation of Leslie Roy. Exhibit 13 is  
22 the prepared text of Tom Gasseling. And Exhibit 14 is  
23 Duane Desserrault's presentation, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: All right. I  
25 assume that Ken and Duane spell their last names the

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1 same.

2 MR. MONAHAN: They do.

3 ADMINISTRATIVE LAW JUDGE: And both of  
4 those last names end in a t as in Tom.

5 MR. MONAHAN: Correct.

6 ADMINISTRATIVE LAW JUDGE: Okay. All  
7 right. Good. Now, I know there were limited duplicate  
8 copies. Are those counsel in the room who need a copy  
9 in possession of one? Is there anyone that didn't get a  
10 copy that would like a copy at the next break when a  
11 copy might be produced? All right. It looks like they  
12 stretched far enough. Now, there's one reason why you  
13 might want to make one additional duplicate and that  
14 would be when the court reporter sends in the tapes at  
15 the end of the day, he could enclose a copy of those for  
16 the typist to be guided as she listens to the tape in  
17 typing what was said. It just would make it easier for  
18 the typist. So if, at a break, lunch break or whatever,  
19 some time before the end of the day when the tapes go,  
20 if you could duplicate those statements for the typist  
21 that would just help.

22 MR. MONAHAN: We will do so, Your Honor.

23 ADMINISTRATIVE LAW JUDGE: All right.

24 Good. All right. Then you may call your first witness.

25 MR. MONAHAN: Thank you, Your Honor. With

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1       that, the Proponents' Committee would call its first  
2       witness, Mr. Stephen Carpenter.

3               ADMINISTRATIVE LAW JUDGE:       Would you again  
4       state and spell your names for us?

5               MR. CARPENTER: My name is Stephen Carpenter.  
6       S-t-e-p-h-e-n C-a-r-p-e-n-t-e-r.

7   \*\*\*

8       [Witness sworn]

9   \*\*\*

10              ADMINISTRATIVE LAW JUDGE:       Mr. Monahan, you  
11       may proceed. Do you have any preliminary questions  
12       before the witness begins?

13              MR. MONAHAN: I do not, Your Honor. Again,  
14       as I mentioned, we are going to make this a fairly  
15       informal presentation. I do not intend to conduct  
16       direct examinations. If perhaps a witness gets lost or  
17       flustered, I may speak up to try to get them back on  
18       track. But this is the Proponents -- their own  
19       proposal, Your Honor.

20              ADMINISTRATIVE LAW JUDGE:       All right.  
21       Thank you. Mr. Carpenter, you may proceed.

22              MR. CARPENTER: Thank you, Your Honor. On  
23       behalf of the Hop Marketing Order Proponents Committee,  
24       we would like to extend our appreciation to the United  
25       States Department of Agriculture for the opportunity to

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1 defend our proposal for a Federal marketing order in a  
2 formal public forum. This process began almost two  
3 years ago in the wake of severe economic hardship  
4 brought on, in part, by a chronic oversupply situation  
5 and in the wake of several voluntary industry efforts to  
6 bring supply back in line with demand. In November of  
7 2001, the Hop Growers of America appointed a taskforce,  
8 which became known as the Production Management Team, to  
9 study the problem of chronic oversupply and to provide a  
10 recommendation to the industry at the 2002 HGA  
11 Convention in Salishan, Oregon. A series of meetings  
12 were held throughout the Pacific Northwest in order to  
13 gather input from the grower community. The meetings  
14 were well attended and a consensus was developed on  
15 several key issues. First of all, the program must be  
16 mandatory with penalties for non-compliance. Secondly,  
17 the benefits and the cost must accrue equitably across  
18 the industry. And thirdly, our input from the Oregon  
19 growers was that they requested that Washington growers  
20 take a leadership role in addressing the situation. The  
21 production management team took this information and  
22 developed a two-part recommendation that was presented  
23 to the industry at the 2002 HGA Convention. Phase I of  
24 the recommendation Washington would take a leadership  
25 role in reducing production by pursuing the

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1 implementation of the set aside program, which would  
2 provide financial incentive for growers to leave acreage  
3 unstrung for the 2002 crop funded by a special  
4 assessment. Phase II, a proponents committee would be  
5 formed to pursue the development of a federal marketing  
6 order for hops. In February of 2002, a proponents  
7 committee was formed and a new series of industry  
8 meetings were initiated in Oregon, Idaho and Washington  
9 to solicit input into the features of a proposal for a  
10 federal marketing order. At that time, the services of  
11 Ag Management and Rod Christiansen were secured by the  
12 Proponents Committee. Concurrent with Proponents  
13 Committee activity, the Washington State Department of  
14 Agriculture was petitioned to begin the process of  
15 allowing a referendum on the set aside program. Private  
16 contracts were agreed to among a majority of Washington  
17 growers, ensuring participatory support for setting  
18 aside 6000 acres of 2002 production and support for a  
19 subsequent referendum. On May 1, 2002, the prerequisite  
20 minimum commitment of 6000 acres was reached and on May  
21 6, 2002, the acting director of the Washington State  
22 Department of Agriculture recommended that the set aside  
23 proposal go to referendum. On May 30, 2002, the  
24 decision was reversed and the referendum was denied  
25 effectively too late for growers to string acres

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1 committed to the program. Meanwhile, the Proponents  
2 Committee's activities continued. In July 2002, a first  
3 draft of a proposed federal marketing order was  
4 presented to the industry and another round of industry  
5 meetings were held to hear input. After modifications  
6 based on this input or incorporated, the proposal was  
7 submitted to the USDA on October 7, 2002. This entire  
8 process has been open, inclusive and represents a  
9 sincere effort to develop a consensus on a proposal,  
10 which will give the industry a tool to use to bring some  
11 much needed stability to our struggling industry. We  
12 firmly believe that a health hop industry is in the best  
13 interest of growers, merchants and especially our  
14 customers. It is a sincere wish of the Proponents  
15 Committee that the proceedings over the next few days  
16 are fruitful, the debate remain open and honest, and  
17 above all, civil, as we discuss the proposed federal  
18 marketing order for hops.

19 ADMINISTRATIVE LAW JUDGE: Thank you,  
20 Mr. Carpenter.

21 MR. MONAHAN: Your Honor.

22 ADMINISTRATIVE LAW JUDGE: Mr. Monahan.

23 \*\*\*

24 STEPHEN CARPENTER,  
25 having first been duly sworn, according to the law,

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1 testified as follows:

2 BY MR. MONAHAN:

3 Q. There is one question I have  
4 Mr. Carpenter. You had discussed the Hop Growers of  
5 America's role in the initial stages of the hop  
6 marketing order. Can you please tell the -- or describe  
7 for those assembled the role of Hop Growers of America  
8 in the hop industry?

9 A. Hop Growers of America would be our  
10 national growers organization. They are represented by  
11 growers in Washington, Oregon and Idaho. They really  
12 play no role in the marketing order itself, but the  
13 predecessor of the Proponents Committee came from a  
14 taskforce commissioned by the HGA.

15 Q. With Your Honor's permission, I'd like to  
16 approach Mr. Carpenter and hand him a document that I  
17 have marked as Exhibit 15.

18 \*\*\*

19 ADMINISTRATIVE LAW JUDGE: You may.

20 \*\*\*

21 BY MR. MONAHAN:

22 Q. And Your Honor, through oversight, I just  
23 found that exhibit in my briefcase. I would like to --  
24 I don't have copies for everybody. I would like to ask  
25 Mr. Carpenter to review it, describe it for the record.

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1 I will not move for its admission until I've had the  
2 opportunity to make copies and provide them to counsel.  
3 Okay. With that, Mr. Carpenter, do you recognize  
4 Exhibit 15?

5 A. This was a document created early on in  
6 the process to identify the problem of chronic  
7 oversupply.

8 Q. Who prepared it?

9 A. It was -- I'm not sure specifically who,  
10 but it was prepared under the auspices, I believe, of  
11 the production management team.

12 Q. Okay. And that was at the first stages  
13 of trying to...

14 A. Correct.

15 Q. ...understand whether a hop marketing  
16 order was appropriate?

17 A. That's correct.

18 Q. Okay. I have nothing further, Your  
19 Honor.

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: All right. With  
22 regard to cross-examining this witness, I think with  
23 regard to the document that's been marked as Exhibit 15,  
24 we ought to recall this witness for that purpose. Do  
25 you agree, Mr. Monahan?

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1 MR. MONAHAN: He'll be available for the  
2 duration of the proceedings, Your Honor.

3 ADMINISTRATIVE LAW JUDGE: Okay. Good. So  
4 don't concern yourselves with a document you haven't  
5 seen yet, but with regard to Mr. Carpenter's prepared  
6 statement, which he has read into the record, is there  
7 any cross-examination? Mr. Moody?

8 \*\*\*

9 BY MR. MOODY:

10 Q. Thank you, Your Honor. Mr. Carpenter,  
11 you identified a problem, which you characterize as  
12 chronic oversupply. Is that correct?

13 A. That is correct.

14 Q. Okay. And is that -- by that do you mean  
15 -- can you give a little bit more information about what  
16 you mean by chronic oversupply?

17 A. I think we'll probably get into the meat  
18 of the numbers with our next presentation and subsequent  
19 presentations. But as an industry, we've had this  
20 inventory that's kind of hung over our heads that has  
21 contributed to poor economic conditions.

22 Q. All right. Is one of the purposes of the  
23 federal marketing order proposal to increase the price  
24 of hops?

25 A. No.

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1 Q. Okay. What is the expected price impact  
2 of a proposal if any?

3 A. Well, the proposal is designed to manage  
4 the oversupply. And obviously, if that means that  
5 prices get closer to parity, then that's a way to  
6 measure success.

7 Q. Okay. So do you intend the proposal to  
8 have an effect on grower price?

9 A. Indirectly, yes.

10 Q. Okay. And what's the -- for example, I  
11 noticed that inflation adjusted price for '02 the last  
12 year for which USDA has data here was \$1.75 a pound. Is  
13 that correct?

14 A. I don't know.

15 Q. All right. Well, any -- the nominal  
16 price, the price in dollars you received that year from  
17 '02 was \$1.94 a pound. Is that correct as far as you  
18 know?

19 A. I have no idea.

20 \*\*\*

21 MR. MONAHAN: Jim, are you asking...

22 MR. CARPENTER: I don't have that.

23 MR. MOODY: If you have that -- I don't  
24 know if you have a copy of the exhibit -- the USDA data  
25 exhibit, Exhibit 5?

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1 ADMINISTRATIVE LAW JUDGE: The court  
2 reporter can hand it to him.

3 MR. MOODY: And if you could look,  
4 Mr. Carpenter, at...

5 ADMINISTRATIVE LAW JUDGE: Just a moment,  
6 Mr. Moody. I had asked the court reporter to hand the  
7 witness Exhibit 5 please.

8 THE REPORTER: Exhibit 5?

9 ADMINISTRATIVE LAW JUDGE: Yes, please.

10 MR. MOODY: Right. And Table 1 -- the  
11 second page of Table 1.

12 ADMINISTRATIVE LAW JUDGE: Thank you.

13 MR. CARPENTER: I have the document in front of  
14 me. What is it you...

15 \*\*\*

16 BY MR. MOODY:

17 Q. Okay. The second page of Table 1, the  
18 last line there for 2002. It says the grower price was  
19 \$1.94 a pound for that year.

20 A. Right.

21 Q. Is that correct to the best of your  
22 knowledge?

23 A. That's what the document indicates.

24 Q. Well, do you have any reason to differ  
25 with that \$1.94?

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1 A. No.

2 Q. Is that a fair approximation of what your  
3 returns were for that year?

4 A. I have no way of answering that unless I  
5 can go back to my records.

6 Q. All right. And then what then is the  
7 Proponents Committees price objective under the federal  
8 proposal?

9 A. I don't think there's ever been a price  
10 objective established. We want to manage the oversupply  
11 situation.

12 Q. Okay. Do you have a price target in  
13 mind, setting the supply at a particular level that  
14 would produce a particular price?

15 A. No. We do not.

16 Q. Do you have a particular target in mind  
17 as far as the supply objective?

18 A. Not at this point. As a Proponents  
19 Committee, our job is to put together a tool. I think  
20 perhaps you're getting into questions that an  
21 administrative committee are going to have to address at  
22 some point. The Proponents Committee -- our job was to  
23 put together a tool based on input from the industry,  
24 which we tried to accomplish.

25 Q. All right. Well, what methodology would

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1 be used to fix the appropriate level of production for  
2 each season?

3 A. The administrative committee will  
4 establish a saleable on an annual basis.

5 Q. But that represents a production target.  
6 Is that correct?

7 A. That is not correct.

8 Q. Okay. But the first thing the committee  
9 is going to do is to decide what the production should  
10 be for the next calendar year or the next production  
11 year.

12 A. That is incorrect.

13 Q. Okay. What's the first -- what's the --  
14 in dealing with this oversupply problem -- supposed  
15 oversupply problem -- what's the committee's first task?

16 A. Well, their task is to establish a  
17 saleable on an annual basis.

18 Q. Okay. And a saleable is a percentage of  
19 the base.

20 A. Correct.

21 Q. Okay. And the base times the saleable  
22 gives you a figure. Correct?

23 A. Would you repeat that please?

24 Q. Base times the saleable gives you a  
25 figure in pounds.

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1 A. Correct.

2 Q. And that figure in pounds represents  
3 what?

4 A. What can be sold into the trade.

5 Q. Okay. And is that -- would it be fair to  
6 say that's the supply?

7 A. The supply that is made available to the  
8 trade. Correct.

9 Q. Yes. Plus carryover.

10 A. Plus carryover?

11 Q. Yes.

12 A. I guess inventory would have to be a  
13 figure that would be incorporated into the committee's  
14 decision.

15 Q. Okay. So the supply for the upcoming  
16 season would be the saleable times the base plus the  
17 carryover. Is that correct?

18 A. Yes.

19 Q. Okay. Then what methodology would be  
20 employed to determine the supply target?

21 A. I would think that the administrative  
22 committee would have to have some type of records of  
23 what the inventory is, what the production is and what  
24 the perceived demand is.

25 Q. Okay. I notice that the production for  
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1 2002 was 58,336 pounds. Is that correct?

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE: Where are you  
4 looking, Mr. Moody?

5 MR. MOODY: I'm looking at the 2002 line,  
6 the third column.

7 ADMINISTRATIVE LAW JUDGE: Which page of  
8 Exhibit 5?

9 MR. MOODY: It's page 2. All right. Would  
10 that be 58,336,000 pounds?

11 MR. CARPENTER: That's correct.

12 MR. MOODY: Okay. Now, is that -- was that  
13 figure for that year, given the methodology you've just  
14 outlined, too large or too small or just about right?

15 MR. CARPENTER: I have no way, as an  
16 individual, of determining that.

17 MR. MOODY: Okay. What methodology would  
18 be employed to determine that?

19 MR. CARPENTER: Well, you would need to know  
20 what demand is. You would need to know what supply is.  
21 And you would need to know what the inventory is.

22 MR. MOODY: Okay. Why don't you work out  
23 for me using 2002 data and employing the methodology  
24 you're proposing what the saleable would be for 2002?

25 MR. MONAHAN: Your Honor, I'd object -- I'd  
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1 object to the question, Your Honor. I think that this  
2 witness has already testified that that is something  
3 that the administrative committee will have to address  
4 once it is convened if there is an order actually in  
5 place.

6 ADMINISTRATIVE LAW JUDGE: The objection is  
7 noted, Mr. Monahan, but the witness may answer the  
8 question.

9 MR. CARPENTER: Would you repeat the question?

10 \*\*\*

11 BY MR. MOODY:

12 Q. Yes. Employing the methodology you  
13 proposed, could you work out for me what the saleable  
14 would be for 2002?

15 A. As an individual I cannot. I don't have  
16 enough information.

17 Q. Okay. What information do you lack you  
18 need in order to...

19 A. Well, I need the actual numbers.

20 Q. Okay. Well, aren't they contained in  
21 this data table?

22 A. No.

23 Q. Okay. What's missing from the data  
24 table?

25 A. Well, I don't think a demand figure is

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1 included in there.

2 Q. Okay. Would you get that -- for 2002  
3 where would you get that from?

4 A. Well, you know, I'm not here to comment  
5 on the methodologies that the administrative committee  
6 might make. It's their decision. It's their job to  
7 find that out. I would think that there would be --  
8 there's plenty of industry publications that estimate  
9 demand. I would think that that would go into the  
10 process as well. But that's up for the administrative  
11 committee to decide and we represent the Proponents  
12 Committee here today.

13 Q. Right. Well, one of the things -- one of  
14 the questions this hearing is to explore is how the  
15 order would work in practice. And so since 2002 is long  
16 since past and the data is, you know, in the barn, I  
17 think it's a fair question to ask how, under the  
18 Proponents' proposal, the saleable would be calculated  
19 for that year since you have all the figures for 2002.

20 A. I do not have all the figures.

21 Q. Okay. What are you lacking?

22 A. I am lacking demand figures.

23 Q. Okay. And -- but you have on the data  
24 tables here -- you have figures for consumption for  
25 2002.

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1 A. Where are those at?

2 Q. Okay. Let's look at -- if I could ask  
3 you to look, Mr. Carpenter, at Table 7.

4 A. I don't see a consumption figure there  
5 for 2002.

6 Q. Okay. Let me -- looking back on 2002  
7 season, under the Proponents' proposal, how would demand  
8 be calculated?

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: I think he  
11 answered that one, Mr. Moody. He indicated that the  
12 administrative committee would utilize data that was  
13 published...

14 MR. MOODY: Okay. And that's...

15 ADMINISTRATIVE LAW JUDGE: ...and reached  
16 that conclusion.

17 MR. MOODY: Right. And that's, I guess,  
18 what I'm trying to get at is how would the order operate  
19 in practice. What data would the use? Because since a  
20 saleable is a function of demand it's very important to  
21 know how demand would be calculated because one person  
22 might think it's 50 million pounds and one person might  
23 think it's 100 million pounds.

24 ADMINISTRATIVE LAW JUDGE: I guess to  
25 answer your question, Mr. Moody, it would operate very

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1 similar to the administrative committee's decision  
2 making in the prior order in determining what the  
3 saleable is going to be on an annual basis. The goal to  
4 bring stability to the industry and I think it would  
5 function very similarly -- I'm speculating a little bit  
6 here -- but I think it would function very similarly to  
7 the administrative committee in the prior order.

8 Q. Okay. And where would the committee get  
9 the data to determine this demand figure?

10 A. Various publications, inquiries to  
11 customers. Again, they would use, I would assume, the  
12 same methodology that the prior administrative committee  
13 used to establish the saleable.

14 Q. Okay. Well, do you have any kind of an  
15 opinion as to what the saleable should have been for  
16 2002 if it would have been in operation?

17 A. I have not.

18 Q. Do you have any idea what the demand was  
19 for 2002?

20 A. I do not.

21 Q. All right. Do you -- in your own  
22 production, do you have a chronic oversupply in your own  
23 production of hops?

24 A. On my farm?

25 Q. Yes, sir.

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1 A. No.

2 Q. Well, where in the industry is the  
3 overproduction occurring?

4 A. It's occurring across the industry. I  
5 think -- we see it in prices and it's obvious it occurs  
6 across the industry.

7 Q. Well, how it is that the industry is  
8 overproduced but not you?

9 A. We are not overproduced on our farm.

10 Q. Okay. Then getting back to my previous  
11 question, how would we find out where the in the  
12 industry the chronic overproduction is occurring, among  
13 which group of growers or which region or whatever.  
14 Where is that overproduction taking place?

15 A. I don't know if I can answer that  
16 specifically. I don't know enough about each grower's  
17 specific operation to know. I don't think I can answer  
18 that.

19 Q. Well, how do you know the industry is in  
20 a state of chronic overproduction as a whole?

21 A. Well, I think the numbers show that we  
22 have produced more hops as an industry than what the  
23 market needs. I think we'll be getting into that in  
24 subsequent testimony.

25 Q. Okay. Are hops that are in excess of

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1        what the "market needs" destroyed?

2                    A.    No.

3                    Q.    What happens to those excess hops over,  
4        let's say, the last five years or so?

5                    A.    They sit in warehouses.

6                    Q.    Okay.   Now, in what form do they sit in  
7        warehouse?

8                    A.    Raw hops, pellets, extract, all forms.

9                    Q.    Okay.   And then what happens to the hops  
10       after they've been in the warehouse for a time?

11                   A.    What happens to the hops?

12                   Q.    Yes.   Are they eventually destroyed,  
13       thrown out, fed to cattle, sold to brewers?

14                   A.    All of the above.

15                   Q.    Okay.   Let's focus on the waste for a  
16       moment.   What situations can you give as far as hops  
17       that have actually be thrown out of disposed of?

18                   A.    I think some older aroma crops get to the  
19       point where they're unmarketable.

20                   Q.    Okay.   Do you have any data on the  
21       quantity of hops?

22                   A.    I do not.

23                   Q.    Do you know of any data sources?

24                   A.    No.

25                   Q.    Okay.   Isn't it true that most of the

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1 hops stored in the warehouse are eventually sold to  
2 brewers and dealers?

3 A. That is true.

4 Q. Okay. Then would you characterize a sale  
5 of those hops as an example of chronic oversupply?

6 A. I think the fact that the hops are there  
7 in the beginning certainly has a detrimental effect on  
8 return back to grower and has really a devastating  
9 effect on our industry. We see growers who are no  
10 longer growers who are, you know, going back to school  
11 to become teachers. And that's the type of thing --  
12 that's one of the goals that the committee put together  
13 was try to stabilize the industry so that those that  
14 want to remain profitable growing hops can.

15 Q. Isn't it true that hops can be  
16 efficiently stored in a warehouse and be marketed in a  
17 subsequent year?

18 A. That is true.

19 Q. And isn't it true that brewers and  
20 dealers also store hops for multiple years?

21 A. That is true.

22 Q. Aren't there several forms that hops can  
23 be stored in?

24 A. Yes.

25 Q. And what's the -- in your view, what's

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1 the most efficient way to store the hops?

2 A. The most efficient way to store hops?

3 Q. Um-hum.

4 A. Probably as extract. Probably the most  
5 stable form of storage is extract.

6 Q. All right. And do you store -- have you,  
7 in the past, stored some of your own production in  
8 warehouses?

9 A. Yes.

10 Q. As extract?

11 A. Yes.

12 Q. Okay. And is there an approximate  
13 figure? Do you store five, 10 percent of your  
14 production in warehouse or is there some kind of  
15 historical amount you've stored?

16 A. I don't have those figures available.  
17 No.

18 Q. All right. So -- and by storing those  
19 hops in the warehouse doesn't that give you an  
20 opportunity to respond to spot market purchases?

21 A. Could you be more specific?

22 Q. Yes. The fact that you've got hops  
23 stored in a warehouse doesn't that give you a chance to  
24 exploit opportunities that come along in the spot  
25 market?

1           A.    A grower who has inventory when the  
2 market needs it certainly has the ability to take  
3 advantage of the market over a grower that doesn't.

4           Q.    Is there some optimum level of storage  
5 that would not constitute a chronic oversupply?

6           A.    Would you repeat that please?

7           Q.    Yes. There is some level of storage or  
8 grower inventory that in your view would not be a  
9 chronic oversupply?

10          A.    Well, I would think that there would be  
11 an operational inventory that would -- per se, that you  
12 would need to have to take care of short-term needs of  
13 customers.

14          Q.    And what should that figure be?

15          A.    I don't know.

16          Q.    How would you figure it out?

17          A.    How would I determine what that figure  
18 is?

19          Q.    Um-hum.

20          A.    You would have to estimate demand and  
21 estimate supply and come up with a figure.

22          Q.    Okay. And would that process of  
23 estimating demand be the similar process to what you  
24 described before in setting a saleable?

25          A.    I would think you would need to have

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1 those figures together.

2 Q. For the 2002 period then, in your view,  
3 what would be the optimum level of inventory?

4 A. I can't answer that question. I don't  
5 have all the figures in front of me and it's not my job  
6 any way. It would be the job of a duly elected  
7 administrative committee.

8 Q. Well, but you're, as a Proponent  
9 representative, proposing a methodology to employ -- a  
10 formula, if you will, to get at that figure and that's  
11 what I'm trying to explore as to what that formula would  
12 be in using historical data what result that formula  
13 would produce.

14 A. Actually, the Proponents Committee is not  
15 proposing a methodology. We're proposing that it be the  
16 job of the administrative committee to come up with  
17 those figures. It's not our job to do the  
18 administrative committee's job.

19 Q. Oh, I see. So there's no one -- no  
20 witness that you know that's going to present using  
21 historical data how the marketing order would have  
22 operated had it been in place?

23 A. Not to my knowledge.

24 Q. All right. The supply variability from  
25 year to year is that due to changes in weather

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1 conditions in part?

2 A. That would be a factor.

3 Q. And do you think the production  
4 variability from year to year has been -- the  
5 variability now -- has been, in any way, unreasonable?

6 A. Unreasonable?

7 Q. Yes.

8 A. In what way?

9 Q. That's my question for you. Do you think  
10 there's been too much variability from year to year?

11 A. That's a subjective term and I have no  
12 opinion. I don't know.

13 Q. All right. Do you think the price  
14 fluctuations from year to year have been unreasonably  
15 variable?

16 A. I think from an industry standpoint they  
17 have been.

18 Q. Okay. What is the -- in your view, what  
19 is a reasonable level of price fluctuation from season  
20 to season?

21 A. I really have no opinion.

22 Q. All right. And I think you indicated  
23 earlier that you had no price target under your  
24 proposal. Is that correct?

25 A. That's correct.

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1 Q. Now, your own operation now, have you  
2 been an expanding producer or a reducing -- a declining  
3 producer in terms of your acreage?

4 A. Over what period of time?

5 Q. Going back to 1997.

6 A. On our particular operation I believe  
7 we're about the same size, perhaps have reduced  
8 marginally.

9 Q. Okay. And what's the name of your farm?

10 A. Carpenter Farms.

11 Q. Carpenter Farms. So you've reduced your  
12 acreage slightly in that period of time?

13 A. Yeah. I -- you know, without having -- I  
14 didn't come here prepared with my production figures to  
15 answer your question, but I think in general about the  
16 same level of '97, perhaps a little smaller.

17 Q. Okay. Have you worked out under your  
18 proposal what your base would be?

19 A. No. I have not.

20 Q. Now, your -- how many -- well, how many  
21 production entities are you involved in or how many  
22 production entities are you connected with?

23 A. Personally?

24 Q. Yes.

25 A. I own a minority share in one production

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1 entity.

2 Q. Okay. That's Carpenter Farms?

3 A. That's correct.

4 Q. Okay. And what's Carpenter Brothers?

5 A. That is an entity owned by my father and  
6 another gentleman.

7 Q. Okay. And you have no economic interest  
8 in that?

9 A. I have none.

10 Q. Okay. And what's Yakima Chief Partners?

11 A. I have no idea.

12 Q. Okay. So under your proposal, you'd have  
13 one vote as a grower.

14 A. Well, I think we've got on the schedule  
15 later on -- I think the committee is in the process of  
16 formulating a proposal for voting and I would prefer to  
17 defer that to a later time.

18 \*\*\*

19 MR. MONAHAN: Just for purposes of  
20 clarification, Jim, are you asking about a subsequent  
21 referendum?

22 \*\*\*

23 BY MR. MOODY:

24 Q. Yes. All right. Now, Mr. Carpenter,  
25 you've -- we're in the '03 -- how you measured the '03

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1 season. Is that correct?

2 A. Have I measured...

3 Q. No. It's correct to describe the present  
4 season as the '03 season.

5 A. That's correct.

6 Q. Okay. And growers in this industry are  
7 given a grower number to identify them as a unique  
8 grower. Is that correct?

9 A. That is correct.

10 Q. All right. Now, is it true that you've  
11 transferred some of your hops to people with other  
12 grower numbers for this season?

13 \*\*\*

14 MR. MONAHAN: Your Honor, I would just object  
15 to this line of questioning. Seems like we've gone very  
16 far off field from the scope of the direct examination.  
17 There will be a presentation by the Proponents'  
18 Committee as to our suggestions and thoughts as to how a  
19 subsequent referendum should be conducted. But I  
20 believe we're a little far off field in the cross-  
21 examination.

22 ADMINISTRATIVE LAW JUDGE: I'm going to  
23 allow wide latitude on cross-examination while a  
24 particular witness is here. Each grower is an expert in  
25 his own way. And if Mr. Moody can obtain information

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1 from each one that's fine with me or any other cross-  
2 examiner. However, I never have cautioned you all that  
3 some of the questions that may be asked may be relevant  
4 but you are not required to reveal the information  
5 because it's proprietary. And I'm sensing that you  
6 might be getting close there, Mr. Moody. So at any  
7 point if anyone feels you're being asked to divulge  
8 something that would put you at a competitive  
9 disadvantage you are not required to answer that  
10 question.

11 MR. MOODY: Your Honor, this line of  
12 questioning actually will become relevant as we flush it  
13 out with other testifiers, but it will -- since there's  
14 only approximately 200 growers in this industry and  
15 since the no count is about 50 percent or would vote no  
16 in the referendum, at this point there is quite -- will  
17 be quite a contention as to who's eligible to vote as a  
18 grower. And it's not unique in this program. It came  
19 up in pork and it came up in sheep. And when a vote is  
20 anticipated to be fairly close, trying to figure out  
21 who's a grower and who's eligible to vote, you know,  
22 could turn out to be outcome determinative of the  
23 referendum. And because of some things that have  
24 happened in the last couple seasons I need to explore  
25 that with each of the witnesses to show the potential

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1 risks associated with the rules for voting.

2 ADMINISTRATIVE LAW JUDGE: All right. Now,  
3 how does the referendum issue relate to what's before me  
4 here?

5 MR. MOODY: Well, one of the definitions in  
6 the order is who is a grower. And a grower -- a  
7 producer ultimately will have a right to vote in a  
8 referendum. And so it turns out to be quite important  
9 to know in an objective way who a grower is so that when  
10 the referendum is eventually conducted, if it's  
11 conducted, there is an objective way to determine who's  
12 eligible to vote and who isn't. Kind of like a  
13 residency requirement in a precinct. You know you have  
14 to find out for sure if someone lives there or they  
15 don't in order to determine whether they're qualified to  
16 vote.

17 ADMINISTRATIVE LAW JUDGE: All right.  
18 Thank you. I understand now. You may proceed, Mr.  
19 Moody. Do you remember your last question?

20 MR. MOODY: I'll just ask it again if  
21 that's all right, Your Honor.

22 ADMINISTRATIVE LAW JUDGE: You may.

23 \*\*\*

24 BY MR. MOODY:

25 Q. All right. For the '03 season, did you

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1 transfer some of your bales of hops to other grower  
2 numbers?

3 A. Some of the bales of Carpenter Farms'  
4 hops to other grower numbers?

5 Q. Yes.

6 A. No. And I would just like to state I  
7 agree with your statements that the entire issue of the  
8 referendum and who gets to vote and who doesn't is very  
9 important. And I think the Proponents Committee  
10 recognizes that and I think we will have some proposals  
11 later on in that regard and perhaps that would be a good  
12 time for questioning to occur on those issues.

13 Q. Do you know who LB Farms is?

14 A. No. I don't.

15 Q. SP Farms?

16 A. Yes.

17 Q. And were some of the hops produced on  
18 your land assigned to their grower number?

19 A. No.

20 Q. Donald Riel?

21 A. I know who Don Riel is.

22 Q. And same question. Were some of your  
23 hops reported under his grower number?

24 A. No.

25 Q. Darryl Riel?

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1 A. I don't know that I've met Darryl.

2 Q. Stepping Pea?

3 A. No.

4 \*\*\*

5 MR. MONAHAN: Your Honor, he did answer the  
6 question that none of his hops were assigned to other  
7 growers. I don't know if we need to go through a  
8 laundry list and answer no each time.

9 ADMINISTRATIVE LAW JUDGE: Mr. Moody may  
10 want to just jog the witness's memory in the event he  
11 may have overlooked something. I trust you're not going  
12 to take a lot of time at this, Mr. Moody.

13 MR. MOODY: No. There's only seven  
14 growers, Your Honor.

15 ADMINISTRATIVE LAW JUDGE: All right. You  
16 may proceed.

17 \*\*\*

18 BY MR. MOODY:

19 Q. Stepping Pea, Inc.?

20 A. No.

21 Q. Henry Tobin?

22 A. Are you asking if you know these growers?

23 Q. Yes.

24 A. I know Hank Tobin.

25 Q. And were any of your hops reported under  
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1 his grower number?

2 A. No.

3 Q. And the last one is Chiefton Acres? Do  
4 you know that grower?

5 A. I am not sure, but I am sure none of our  
6 hops were delivered under his grower number.

7 Q. Okay. And for your Carpenter Farms  
8 Operation did you have any leasehold interests in  
9 connection with other growers for this season?

10 A. No.

11 Q. You described a situation where there was  
12 a set aside, I think you said, of 6000 acres for the '02  
13 season. Is that correct?

14 A. That's correct.

15 Q. And was that acreage all in Washington  
16 State?

17 A. That's correct.

18 Q. And when you use the term set aside does  
19 that mean that hops weren't produced on those acres for  
20 that season?

21 A. That's -- hops were produced but not  
22 strung -- or potentially produced but not strung.

23 Q. Okay. Meaning exactly what?

24 A. I believe the set aside program required  
25 for growers to be eligible -- and this was a proposed

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1 program and never did go to fruition -- but I believe  
2 the program was set up so that people were eligible for  
3 a set aside financial incentive if they did not string  
4 hops -- in other words, if they did not put twine in the  
5 fields for the 2002 crop.

6 Q. Okay. And what's the significance of  
7 stringing hops? If you could just briefly explain that  
8 role in production?

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: Hold that  
11 question. We'll change tapes.

12 \*\*\*

13 [Off the record.]

14 [On the record.]

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: We're back on  
17 record at 11:33. Mr. Moody, will you ask that question  
18 again?

19 \*\*\*

20 BY MR. MOODY:

21 Q. Yes. What's the significance of  
22 stringing hops in terms of their production and harvest?

23 A. Hops are a perennial crop and on an  
24 annual basis in order to facilitate an easier harvest a  
25 string is put from a plant generally up to an 18 to 20

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1 foot trellis wire and the hops are grown up that string.  
2 And it helps to facilitate the harvest of those plants  
3 to have them on the string.

4 Q. Okay. So if hops aren't strung they  
5 can't be harvested.

6 A. That's not correct. Hops can be  
7 harvested without stringing.

8 Q. But the yield is significantly less.

9 A. I don't know if it's significantly less,  
10 but it's certainly harder to harvest.

11 Q. Okay. So for the 6000 acres of hops that  
12 were -- would the right word be signed up for or  
13 contracted for -- is it correct that that 6000 acres  
14 wasn't strung?

15 A. That is correct.

16 Q. Now, were hops harvested from those 6000  
17 acres?

18 A. Not to my knowledge.

19 Q. Okay. And what was the -- how did you  
20 determine that 6000 acres was the correct amount for the  
21 set aside?

22 A. I'm not sure the 6000 acres -- the reason  
23 the 6000 acres was correct for the set aside is that was  
24 the estimation that the production management team came  
25 up with.

1 Q. Okay. And how did they make that  
2 estimate? I mean why wasn't it 5000 or 7000?

3 A. I think there was an effort to  
4 communicate with merchants and to communicate with  
5 others in the industry to come up with an estimation.

6 Q. And what was the goal of that 6000 acres  
7 set aside?

8 A. The goal was to take some hops out of  
9 production for the 2002 year.

10 Q. All right. And was that expected to have  
11 a price impact?

12 A. I'm not sure if that was a goal. It was  
13 simply meant to take some production out and to provide  
14 an economic incentive for growers to do so.

15 Q. Okay. Did that 6000 set aside acres have  
16 a price impact on that year?

17 A. I can't answer that question. I don't  
18 know.

19 Q. Let me direct your attention to the USDA  
20 data table, Exhibit 5. And I think it's Table 1A, the  
21 last row Table 1A, which has got the inflation adjusted  
22 grower prices. And I would call your attention to the  
23 figures in the right-hand column for the '01 season --  
24 or the '00 season at \$1.75. The '01 season...

25

\*\*\*

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1 ADMINISTRATIVE LAW JUDGE: Just a minute,  
2 Mr. Moody. What page are you looking on?

3 MR. MOODY: It's page 4.

4 ADMINISTRATIVE LAW JUDGE: Page 4. Okay.  
5 Wait just a minute. Okay. Start again looking at page  
6 4.

7 MR. MOODY: Okay. The three numbers in the  
8 bottom of the right-hand column for the '00, '01 and '02  
9 seasons, \$1.75 a pound for each of those seasons.

10 ADMINISTRATIVE LAW JUDGE: Okay. We're  
11 looking at that.

12 \*\*\*

13 BY MR. MOODY:

14 Q. Okay. Mr. Carpenter, isn't it correct to  
15 say that that 6000 acres set aside did not have any  
16 impact on price for the '02 season?

17 A. I can't say whether it did or whether it  
18 not. Our season average prices are a combination of  
19 prices for aroma hops, alpha hops. You've got  
20 fluctuating demands for both varieties. So I can't  
21 really tell you, as an individual witness, whether it  
22 had an impact on price or not. There's too many factors  
23 to look at.

24 Q. Should that 6000 acres have been higher?  
25 Was it too low in your view?

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1           A.    I have no way of determining one way or  
2   the other.

3           Q.    Were these 6000 acres a variety of alpha  
4   and aroma hops?

5           A.    I believe there was no requirement by  
6   those eligible for the set aside to indicate whether it  
7   was aroma hops or alpha hops that was coming out of  
8   production.

9           Q.    Okay.  So you don't -- you couldn't tell  
10   me out of that 6000 acres how much of it was aroma type  
11   hops?

12          A.    I don't recall ever seeing that  
13   information.  I'm not sure it was available.  But I'm  
14   sure I didn't see it if it was.

15          Q.    Okay.  Now, did -- in examining the  
16   potential impact of the marketing order did you run some  
17   scenarios on what the saleable would likely be for the  
18   first few years of operation?

19          A.    I have not.  One piece of information you  
20   would need, of course, is to know what everybody's base  
21   allotment would be.  The Proponents Committee or the  
22   Production Management Team, I can't remember which one,  
23   attempted to do a survey whereby growers would  
24   participate on a confidential basis in submitting  
25   information so that we could do that.  We could run some

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1 scenarios. And we got good participation from  
2 Washington, fairly good participation from Oregon, but  
3 we didn't feel we had enough information to really  
4 project saleables.

5 Q. Now, you looked at the comparative impact  
6 of the order on a declining producer versus an expanding  
7 producer. Is that correct?

8 A. Yes. We have.

9 Q. Okay. Isn't it true that there are --  
10 since the '97 season that some -- there have been  
11 producers who are expanding their acreage? Is that  
12 correct?

13 A. I would assume that would be correct.

14 Q. Okay. Well, how is the fact that some  
15 new investment is coming into the industry consistent  
16 with your testimony that there's a chronic oversupply?

17 A. That's a good question.

18 Q. And I'm anticipating you have a good  
19 answer.

20 A. You know, people have different  
21 situations and different contracts. In general, I think  
22 there's a consensus in the industry that the aroma  
23 situation has been fairly [inaudible] and balance. And  
24 you know, it could be a grower that has a high  
25 percentage of those contracts. I think each individual

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1 situation is different.

2 Q. All right. But isn't the fact that you  
3 have some producers who are expanding production and  
4 increasing investment evidence of the fact that there is  
5 not a chronic oversupply; indeed there's demand for more  
6 hops?

7 A. I think testimony later on will probably  
8 clear that question up for you and I defer that to the  
9 folks that will be testifying after me. I think they  
10 can speak to your question and I think they're more  
11 qualified to answer it than I am.

12 Q. Okay. Who in particular are you thinking  
13 about?

14 A. I think our economic justifications will  
15 core that question.

16 Q. That's Mr. Smith?

17 A. Mr. Smith and Mr. Folwell next week.

18 Q. All right. Now, you looked at these  
19 scenarios of what a declining producer versus an  
20 expanding producer would need to do as far as their sale  
21 and purchase of base. Is that correct?

22 A. Yeah. The committee certainly has  
23 listened to the grower community through the input  
24 process and we've heard what we think is a consensus  
25 from the industry on how to proceed. Yeah.

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1 Q. And isn't it true that an expanding  
2 producer would be required in the first year to buy base  
3 to cover his production?

4 A. Depending on the saleable and depending  
5 on decisions that the administrative committee will  
6 make, certainly that's a potential.

7 Q. And he would be buying base from a  
8 producer who had reduced his production. Is that  
9 correct?

10 A. Potentially.

11 Q. And how is that consistent with your  
12 principle #2 that the costs be equitably distributed?

13 A. We have designed the order so that there  
14 should be plenty of base available on the front end. We  
15 heard from growers in certain segments of the industry  
16 that felt that '97 year was important to them. We had  
17 other growers who felt the later years was important to  
18 them to have that option. What we tried to do is to  
19 take a big tent approach and tried to please as many  
20 people as possible, recognizing we could not please  
21 everybody in terms of establishing what the base period  
22 would be.

23 Q. Well, is -- oh, I'm sorry.

24 A. In fact, subsequent to submitting our  
25 proposal, we added the 2002 year to that as well. We do

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1 not want base to have a value to speak of on the front  
2 end and that is one of the reasons why we went to the  
3 now six-year period so that there would be plenty of  
4 base available for those growers that needed it at  
5 hopefully a very low value.

6 Q. Now, you said you don't want base to have  
7 a value at the front end. By front end, do you mean the  
8 first year of operation of the marketing order?

9 A. I don't think we want to have --  
10 certainly we don't want to have base to have a value at  
11 any point, but we also recognize that if the order is  
12 working the way we hope it to that you know there will  
13 be some value to having an order and therefore some  
14 value to the base.

15 Q. Well, isn't it true that under the old  
16 order that base got as high as \$.90 a pound?

17 A. I'm not sure. I don't recall enough  
18 about the old order to know what the values were.

19 Q. Is there a limit on the value of base --  
20 I mean dollars per pound limit on the value of base?

21 A. Not that I know of. To the extent there  
22 might be a limit to the value of hops, I guess there  
23 would be, but I don't know.

24 Q. All right. So but isn't it your  
25 anticipation under the first few years of operation of

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1 the marketing order that an expanding producer would  
2 need to buy base to cover his production from a  
3 declining producer who no longer was producing those  
4 hops.

5 A. That potential exists.

6 Q. All right. And wouldn't that just  
7 constitute a wealth transfer between the expanding and  
8 declining producer?

9 A. No. Not in my opinion.

10 Q. And why is that?

11 A. I just don't think it fits the definition  
12 of wealth transfer.

13 Q. Well, if I'm an expanding producer and I  
14 write a check to you, a declining producer, aren't I  
15 giving some of my wealth to you?

16 A. Well, I think you're making a business  
17 deal.

18 Q. All right. The bona fide effort  
19 requirement, is it your understanding that in order to  
20 keep your base that a producer would need to produce  
21 hops in a given season in order to retain his base?

22 A. You know, I'm going to defer that to  
23 other members of the committee that have been assigned  
24 those specific parts of the proposal to defend.

25 Q. All right. Why should - if I'm an

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1 expanding producer, why should I have to write a check  
2 to you, a declining producer, where as I could just, on  
3 the other hand, get base from the committee pool?

4 A. I don't know.

5 Q. Well, what would be the objection to just  
6 having a system where base was not -- base not being  
7 produced was just turned into the committee and the  
8 committee kept a list of that available pounds and if I  
9 just wanted to be a new producer I could just get it for  
10 free from the committee?

11 A. Well, I think what the committee has  
12 tried to do is listen to all segments of the industry  
13 and put together a proposal that is amenable to a  
14 majority of the industry. And there have been attempts  
15 to get proposals from people who in general agree that  
16 we need a marketing order to bring stability to our  
17 industry but have a problem with the specific initial  
18 base allotment period. And again, what we tried to do  
19 was listen to all segments of the industry and put  
20 together a proposal that would work for as many in the  
21 industry as possible.

22 Q. Well, would you have any objection to  
23 modification of proposal under which you would just get  
24 your base from the committee rather than having to pay  
25 another grower for it?

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1 A. For initial base allotment?

2 Q. No. Your -- yeah. That's correct.

3 A. You know I would have to defer to that to  
4 the committee. That proposal was never brought before  
5 us at any point during the input process. And I would  
6 have to defer that to the committee to decide.  
7 Certainly we've been open to any type of modification  
8 that makes it more palatable to anybody.

9 Q. All right. Would you have any objection  
10 to that?

11 A. Personally?

12 Q. Yes.

13 A. I can't speak on behalf of the committee  
14 in that regard.

15 Q. No. Just yourself personally, would you  
16 object to a system of obtaining base from the committee  
17 rather than to paying growers for it?

18 A. I would have to give that more thought  
19 than I'm able to right at this point to answer your  
20 question.

21 Q. Okay. Regarding those seven grower  
22 entities I asked you about before, did any of those  
23 growers obtain any kind of an economic interest in hops  
24 grown on your farm?

25 A. Not to my knowledge.

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1 Q. All right. Your Honor, if I could just  
2 have a moment to confer with my colleagues?

3 \*\*\*

4 ADMINISTRATIVE LAW JUDGE: You may. Let's  
5 go off record. It's now 11:49.

6 \*\*\*

7 [Off the record.]

8 [On the record.]

9 \*\*\*

10 ADMINISTRATIVE LAW JUDGE: We're back on at  
11 11:49. Mr. Moody, if you'd repeat what you said off  
12 record?

13 MR. MOODY: Nothing further for me, Your  
14 Honor. And thank you, Mr. Carpenter.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
16 Moody. Now, there may be other cross-examination of  
17 this witness, but I just want to give you an idea of how  
18 I'm keeping time. Those against the proposals have so  
19 far consumed 50 minutes. That's 50 in the cross-  
20 examination. The Proponents have consumed 31 minutes.  
21 So this gives you an idea of how I'm keeping track of  
22 time. When the Proponents are using the time they're  
23 being clocked for it. So far they've used less than  
24 those who are against the proposals. Just so you all  
25 know that your cross-examination counts as well as your

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1 direct examination of witnesses. All right. Additional  
2 cross-examination or do you want to take a brief break.  
3 How is everybody's comfort level? Any suggestions? Mr.  
4 Monahan?

5 MR. MONAHAN: I just suggest that we power  
6 through with this witness until the break, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: All right. Is  
8 that suitable with everyone? All right. Mr. Carswell.

9 MR. CARSWELL: Yes, ma'am. I guess our  
10 southerners are going to be penalized for speaking  
11 slowly.

12 ADMINISTRATIVE LAW JUDGE: No. No. It's  
13 just going to take more of your minutes.

14 MR. CARSWELL: That's what I mean.

15 ADMINISTRATIVE LAW JUDGE: Makes a better  
16 record.

17 \*\*\*

18 CROSS-EXAMINATION

19 BY MR. CARSWELL:

20 Q. I better speed up. I just want to walk  
21 you through a hypo, Mr. Carpenter, and I will try to  
22 make this brief. But forgive me if I make a mistake.  
23 I'll try to correct myself. But under the proposal it's  
24 my understanding that a grower will be assigned a base  
25 based on -- he can take the highest yield of the last

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1 five years between '97 and 2002 -- it may change to 2003  
2 or it may be -- have you changed it to 2003?

3 A. We added the 2002 year. Originally it  
4 was your one year between '97 and 2001, and the reason  
5 for that is you got to recognize this was a two-year  
6 process. A 2002 year had no existed yet and we didn't  
7 want to incent growers to plant hops...

8 Q. Ramp up...

9 A. ...in anticipation. Correct.

10 Q. Okay.

11 A. So the 2002 year has been added as an  
12 option for a base -- initial base allocation year.

13 Q. So assume we're working '97 to 2002 and  
14 the grower would take -- logically it would be in their  
15 economic interest to take their highest yield. Correct?

16 A. That would be logical. Correct.

17 Q. To establish the base.

18 A. Yes.

19 Q. So assume we have grower A who has grown  
20 100,000 pounds of hop with an alpha content of ten  
21 percent. So we have 10,000 pounds would be his base.  
22 And assume that he did that in 1997 and assume that he's  
23 declined the production from 100,000 pounds down to  
24 10,000 pounds. So grower A now is, in the last crop  
25 year, is growing 10,000 pounds and with 1000 pounds of

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1 alpha production. Now assume grower B. And grower B,  
2 in 1997, began at 10,000 pounds. And because of being  
3 very efficient, being very competitive, getting  
4 contracts he's grown, in this last crop year in 2002,  
5 100,000 pounds of a hop and in both '97 and 2002 the  
6 alpha content is again 10 percent and so he's up to  
7 100,000. Now, grower A will receive a 10,000 pound  
8 alpha, 100,000 hop base allotment under the terms of the  
9 HMO, correct, the proposed -- I'll call it HMO, Hop  
10 Marketing Order?

11 A. Sure.

12 Q. And so will grower B. Now assume for the  
13 sake of the hypothetical that the hop administrative  
14 committee establishes a 50 percent cut in the saleable  
15 quantity, which as we'll -- some of our experts will  
16 later discuss maybe or likely will be what's necessary  
17 to achieve a significant reduction in the amount of hops  
18 available in the market. So just for the sake of this  
19 hypo, though, assume that we have a 50 percent cut in  
20 the saleable quality. So now we have grower A who can  
21 grow 50,000 pounds of hops and with a 5000 pounds of  
22 alpha. Is that correct?

23 A. If I understand, yes.

24 Q. And grower B will also be able to grow  
25 50,000 pounds of hops with a 5000 pounds of alpha. Is

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1 that correct? They'll be able to grow as much as they  
2 want, but that's how much they'll be able to sell. Is  
3 that correct?

4 A. Depending on the alpha factor that is  
5 correct of the particular variety. Yeah.

6 Q. I'm a little out of line here in terms of  
7 the logical process, but go back to grower A. The  
8 reason why he's declined from 100,000 pounds to 10,000  
9 pounds is that he couldn't find a market for his  
10 products. He wasn't competitive. Okay. Okay. So now  
11 we have a situation grower A, who grew 10,000 pounds in  
12 the latest year because he wasn't competitive now can  
13 either grow -- he can grow the same 10,000 pounds and  
14 he'll have a 40,000 pound base allotment or sell.  
15 Grower B, who grew 100,000 pounds last year can only now  
16 sell 50,000 pounds unless he purchases base allotment  
17 and he grew 100,000 pounds the last year because he was  
18 competitive and grower A grew 10,000 pounds last year  
19 because he was not competitive. How is that equitable  
20 and fair that grower B would have to purchase from a  
21 grower, and it could be grower A, an allotment so that  
22 he could expand -- or not expand -- but just grow what  
23 he grew last year?

24 A. Well, there's a lot of hypotheticals in  
25 there and it's certainly something -- this whole issue

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1 is something that the committee spent a lot of time on.  
2 It's really the guts of the order, trying to come up  
3 with something that is fair and equitable to as many  
4 growers as possible. Certainly in that extreme example  
5 that you've given, it appears to be inequitable that the  
6 grower who has expanded and has been competitive and et  
7 cetera, et cetera, would have to purchase base.  
8 However, another feature that we've designed into this  
9 would be the fact that there's going to be so much base  
10 available on the front end of this thing it's the  
11 committee's hope that an equilibrium will be found early  
12 on in the order especially with a strong bona fide  
13 effort requirement. In other words, if you've got that  
14 base, you've either got to use it or you've got to -- if  
15 you don't use it you lose it. So it's our hope that  
16 over the next couple of years that an equilibrium will  
17 be found minimizing any economic impact on growers who  
18 are going to need base.

19 Q. You mentioned that there would be a lot  
20 of base available, but if you had a 50 percent cut in  
21 saleable quantity, isn't it also true that there will be  
22 a lot of base needed for either growers who have been  
23 steady in their production or expanding?

24 A. That's a concern. In fact, it's a  
25 concern of mine as somebody that probably will need to

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1 obtain base at least in the near future. But again,  
2 this proposal is based on input from people throughout  
3 the industry and this is where we felt a consensus  
4 needed to be. Our friends in Oregon, you know, told us  
5 that '97 year was important to them. In general, if you  
6 look at the production in Oregon over the past few years  
7 it's been in decline. And Washington, with the  
8 exception of 2002, it's been the opposite. And so in  
9 trying to forge together a proposal that meets the needs  
10 of as many growers as possible, this is the system we've  
11 come up with. Certainly if there is a system that could  
12 be put in place that would meet the needs of more  
13 growers, we have been, all the way through this process,  
14 open to listening to suggestions. And this seemed to be  
15 the suggestion that worked for most growers.

16 Q. Now assume, just again for the purposes  
17 of this hypothetical, that grower B has to buy -- to  
18 grow what he grew last year he has to acquire 50,000  
19 pounds of base allotment and it costs \$1 a pound --  
20 assume a price of \$1 a pound to acquire that. And so  
21 he's spending 50,000 extra dollars at \$1 per pound,  
22 which is pretty -- that would be a pretty high amount as  
23 compared to what he can even sell his hops for.

24 A. It would be an extremely high amount.  
25 And in practicability, I just can't see how the base is

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1 going to have that type of value on the front end of  
2 this thing. Again, by design we try to develop a  
3 proposal that would have plenty of base available on the  
4 front of it with the expectation that that would find an  
5 equilibrium level and minimize the economic impact on  
6 any individual farm.

7 Q. Do you think there will be any market  
8 value to the base? Do you think the base would be free?

9 A. I think it will be very inexpensive on  
10 the front end. I just -- there's going to be so much of  
11 it out there. One of the challenges we've had with  
12 building this proposal is the fact that, you know, two  
13 years have taken place since we really started looking  
14 in earnest into this as a potential to take ownership in  
15 this problem we have as an industry and do something to  
16 solve it. And it's probably the main reason that that  
17 2002 year was added because time does go on and the  
18 sizes of farms fluctuate. And again, the goal of this  
19 thing is just to put together something that's as  
20 equitable to as many people as possible. This seemed to  
21 be the program that was favored by most of the people  
22 going through the input process.

23 Q. Would you characterize most growers as  
24 having declining production or most growers just having  
25 expanding production or most is steady or can you

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1 categorize it any way, the industry?

2 A. It would -- perhaps there are some of my  
3 fellow members of the Proponents Committee that would  
4 have -- be able to answer that better in general. The  
5 industry has been declining and I think that you could  
6 say that the average grower probably has. Certainly we  
7 have on our operation over the past 15 years.

8 Q. So then separate question. Who would you  
9 see as -- can you categorize a group as expanding  
10 producers or steady visa vie declining producers? And I  
11 think you've indicated, you know, most growers are  
12 declining. And who would you see as benefiting most  
13 from the Hop Marketing Order? Declining producers or  
14 expanding/steady producers?

15 A. Well, as a member of the Proponents  
16 Committee who's listened to input over the last couple  
17 of years, I would hope that all growers would benefit  
18 from the marketing order. Again, certainly there's  
19 going to be some equilibrium that takes place in terms  
20 of the base allocation on the front end. But we've  
21 designed this thing to minimize the economic impact of  
22 base transfers that may take place over the first few  
23 years of the order.

24 Q. I'm sorry. But let me ask you my  
25 question again. Who would you -- can you give an

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1 opinion as to who would benefit, declining producers or  
2 steady/expanding producers, under the basic structure of  
3 the proposed order?

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: He did answer it  
6 when he said he thought all producers would benefit.  
7 But go ahead and go back...

8 MR. CARSWELL: Okay.

9 ADMINISTRATIVE LAW JUDGE: ...to ask more  
10 specifics.

11 \*\*\*

12 BY MR. CARSWELL:

13 Q. Thank you. Thank you. You don't see  
14 steady and expanding producers having to pay net to  
15 declining producers to be able to maintain their  
16 production.

17 A. I think there will be a transfer that  
18 takes place. I'm not willing to speculate on what the  
19 financial terms of that transactions are going to be.

20 Q. And as far as the category of steady and  
21 expanding producers versus declining producers, do you  
22 think that that's fair and equitable to steady and  
23 expanding producers?

24 A. As a steady and expanding producer, yes,  
25 I do think it's equitable.

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1 Q. And you would define yourself as a  
2 steady/expanding producer over the last five years.

3 A. That's correct.

4 Q. I think that's all I have. Thank you,  
5 Your Honor.

6 \*\*\*

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
8 Carswell. Mr. Jekanowski.

9 \*\*\*

10 BY MR. JEKANOWSKI:

11 Q. Thank you, Your Honor. Mr. Carpenter,  
12 how do you decide what to produce on your farm?

13 A. By looking at how I can make the most  
14 money.

15 Q. Okay. Do you produce other things other  
16 than hops -- other crops?

17 A. On our ranch?

18 Q. Yeah.

19 A. Yes. That's correct.

20 Q. What other crops do you produce?

21 A. Apples, cherries, wine grapes, pears, a  
22 few apricots.

23 Q. When would you say that the oversupply  
24 situation that's led to this marketing order proposal --  
25 when would you say that it kind of came about? When has

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1 it developed?

2 A. You know I think we've got some numbers  
3 later on from other members of the committee that can  
4 specifically show you, based on industry numbers, when  
5 that occurred, but over the last few years.

6 Q. Now, over the last few years. You've  
7 stated before that your production is increasing -- has  
8 increased over the last few years or at least stayed  
9 steady.

10 A. Steady or slightly increasing. Right.

11 Q. Why would you increase production if  
12 there's an oversupply situation?

13 A. I think there has been lack of an  
14 oversupply situation to this point on aroma hops. I  
15 think things have been fairly much in balance and we  
16 have planted in recent year some aroma hops. Our alpha  
17 production has been declining on our ranch.

18 Q. So you've mentioned -- so you don't think  
19 that you're overproducing. So you're not really part of  
20 the industry problem of overproduction.

21 A. Oh, I think we need to all assume a  
22 little bit of the responsibility there.

23 Q. Okay. Well, if you're willing to accept  
24 some of the responsibility, then why haven't you  
25 decreased production over the last few years? Why

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1 haven't you done it on your own?

2 A. Well, we've had markets for the hops that  
3 we've produced. And again, the expansion that we've had  
4 on our ranch has been mainly in the aroma area.

5 Q. Okay.

6 A. And there seems to have been a market for  
7 that.

8 Q. Why is it that you feel that a committee  
9 -- eight-member committee or what it is -- why is that a  
10 committee can determine the needs of the market better  
11 than your own decision making?

12 A. I think I can make -- as an individual, I  
13 can make the best decision in the world in terms of  
14 marketing and what to grow and still have those  
15 decisions wrong if we don't have some type of a system  
16 in place for the entire industry. And I think -- you'll  
17 hear testimony later on from people more versed in the  
18 subject than I am -- that the last marketing order did  
19 bring a degree of stability to our industry.

20 Q. You've mentioned that you grow other  
21 crops including apples. What's the market been like for  
22 apples over the last few years?

23 A. Similar to the hop market in that certain  
24 varieties have done well and others have not. And our  
25 acreage in apples have reflected the same thing.

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1 Q. If it's a similar situation, then would  
2 you say that a marketing order would work for apples too  
3 -- I mean the same type or program?

4 A. I think in general you could argue it  
5 might. You got -- it's a -- literally an apples to  
6 oranges comparison because you have so many different  
7 varieties of apples and apples can be grown in a lot  
8 more locations than hops.

9 Q. So it would be harder to regulate apples  
10 because they might be grown in other areas of the  
11 country.

12 A. I think that's one factor that would make  
13 it a little bit tougher.

14 Q. Hops can be grown in other countries. Is  
15 that right?

16 A. Yes. They can.

17 Q. So by the same logic, what do you think  
18 might happen if the U.S. industry restricts its supply  
19 without having an ability to regulate other producers in  
20 other nations?

21 A. Well, if we have people on our  
22 administrative committee that are making decisions to  
23 restrict supply to the detriment of our market share, I  
24 can tell you they aren't going to be earning my vote for  
25 very long.

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1 Q. I don't want to go back to the whole line  
2 of questioning that Mr. Moody brought up before, but  
3 just really quickly, so basically you're saying that  
4 there's going to be someone in this committee who is  
5 able to balance supply and demand and still grow or  
6 maintain exports and bring the industry into balance.

7 A. Someone on the committee?

8 Q. Or some committee or some smart people on  
9 this committee who are going to be able to accomplish  
10 this.

11 A. I hope so.

12 Q. I just want to return again to USDA, the  
13 Exhibit 5. I think it was Table 7. When Dr. Hinman was  
14 testifying, I pointed out the fact that this balancing  
15 item is a very large proportion of production and supply  
16 and demand and that basically that represents an error.  
17 So your -- what I hear you saying is that there is a  
18 committee that's going to be formed that's going to do a  
19 better job at estimating supply and demand than the USDA  
20 was able to do up through 1996.

21 A. I can't say whether they'll be able to do  
22 a better job. I would hope that they would be able to  
23 function similarly to the administrative committee  
24 functioning in the prior order. That committee was able  
25 to make decisions that brought a certain amount of

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1 stability to our industry and I would hope that we would  
2 be able to repeat that with this order.

3 Q. So its your opinion that the order -- the  
4 previous order worked well and achieved its goals.

5 A. I think it worked well in terms of  
6 bringing long-term stability to the industry.

7 Q. That being said, in your opinion, why was  
8 the previous order terminated?

9 A. A combination of quite a few things. I  
10 think the political atmosphere in DC at the time had an  
11 anti-regulatory tone. I think that was a factor. I  
12 think we had perhaps the committee handle some  
13 situations that should have been handled a little bit  
14 differently. You know I think there are just a whole  
15 lot of factors that went into that and there was, quite  
16 frankly, I think, some provisions that really didn't  
17 serve the needs of the industry real well, that we have  
18 tried to address and to change in our proposal.

19 Q. I have nothing further.

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE: All right.  
22 Thank you, Mr. Jekanowski. Any additional cross-  
23 examination?

24 MR. CARSWELL: I'm sorry. I just wanted to  
25 follow up on one area.

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1 ADMINISTRATIVE LAW JUDGE: Mr. Carswell.

2 \*\*\*

3 BY MR. CARSWELL:

4 Q. I'm sorry, Mr. Carpenter. You had  
5 characterized yourself earlier as a steady or expanding  
6 producer.

7 A. Over the past five years.

8 Q. Over the past five years.

9 A. Right.

10 Q. But then I think I heard you say maybe  
11 your alpha has been reduced in the last...

12 A. I think our alpha acreage has been  
13 reduced. Again, I didn't realize I was going on trial  
14 down here. I would have brought information from my own  
15 individual operation. But in general, on our ranch, our  
16 alpha producing acre has slightly declined over the past  
17 five years. I think that's a fair statement to say.

18 Q. So I'm sorry. Net you're producing less  
19 alpha now than you were five years ago. Is that  
20 accurate?

21 A. I believe so.

22 Q. Okay. So you wouldn't be characterized  
23 as a steady or expanding producer.

24 A. In terms of...

25 Q. In terms of...

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1           A.    ...pounds of hops we have -- and acres of  
2 hops -- in terms of pounds of hops we are producing more  
3 pounds than we did five years ago.

4           Q.    In terms of characterization under the  
5 proposed HMO and how the HMO would work, based on alpha,  
6 though, you would not be. Is that correct?

7           A.    I have not -- this is going to be hard to  
8 believe, but I have not really gone back and looked at  
9 what our base position would be under the proposed order  
10 to really be able to answer that question accurately.

11          Q.    Okay. I don't want to mischaracterize  
12 you, but earlier you said that you felt like this was  
13 fair and equitable to steady or expanding producers as a  
14 steady or expanding producers.

15          A.    Correct.

16          Q.    I guess you're indicating now that you  
17 don't know whether you are a steady or expanding  
18 producer under the effect of the HMO. Is that...

19          A.    We are producing more pounds of hops...

20          Q.    Right. But alpha content -- based on  
21 alpha content.

22          A.    I don't know. You know I can't answer  
23 that. I thought you meant in terms of pounds of hops  
24 and...

25          Q.    But in terms of...

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1 A. I don't know.

2 Q. You don't know.

3 A. I would think it would probably be steady  
4 but...

5 Q. Maybe not.

6 A. ...possibly not.

7 Q. Okay. That's all. Thank you.

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
10 Carswell. Mr. Moody?

11 \*\*\*

12 BY MR. MOODY:

13 Q. Thank you. Mr. Carpenter, just a couple  
14 of questions. Introducing the members of the Proponent  
15 Committee it seemed as though everybody was from  
16 Washington State. Do you have any Proponent Committee  
17 members from either Oregon or Idaho?

18 A. We don't have any committee members from  
19 either of those states.

20 Q. Any particular reason for that?

21 A. I think part of it -- you know we had  
22 some people that participated on the production  
23 management team level and they were given the  
24 opportunity. But we heard specifically from Oregon  
25 that, you know, we should -- to be more blunt, we're

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1 part of the problem and we should take leadership role  
2 in providing some solutions. And so we've taken that  
3 challenge and tried to put together a proposal.  
4 Certainly we've made several trips to Oregon and Idaho  
5 to gather input and to run by first drafts and have  
6 solicited input from both areas.

7 Q. Would you have any objection to...

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: Mr. Moody, I  
10 need to change the tape. Just a moment please.

11 MR. MOODY: Okay.

12 \*\*\*

13 [Off the record.]

14 [On the record.]

15 \*\*\*

16 ADMINISTRATIVE LAW JUDGE: We're back on  
17 record now at 12:19. Mr. Moody.

18 MR. MOODY: Thank you, Your Honor.

19 ADMINISTRATIVE LAW JUDGE: You were asking  
20 if he would have any objection...

21 \*\*\*

22 BY MR. MOODY:

23 Q. Right. Would you have any objection, Mr.  
24 Carpenter, to including -- since the season will be over  
25 by then -- '03 season production in calculation of base?

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1           A.    Again, I can't -- I don't want to speak  
2   on behalf of the committee. I think certainly if you're  
3   proposing that there would be support, additional  
4   support if the 2003 were added, I think that's something  
5   that the committee would consider. But I can't answer  
6   that on behalf of the committee. In terms of my  
7   personal opinion, I'd have to give that a little more  
8   thought before I answered your question.

9           Q.    All right. And then for purposes of who  
10   gets to vote in the referendum, should it be the growers  
11   for the '03 season?

12          A.    Well, I think we'll have some specific  
13   proposals later on that another one of our team leaders  
14   will be putting together for the USDA's consideration.  
15   And I don't have anything specific that I can -- I can't  
16   specifically answer that right now.

17          Q.    Okay. In addition to your own farm, do  
18   you have an economic interest in Yakima Chief Ranches,  
19   LLC?

20          A.    I do not personally. No.

21          Q.    Does your family?

22          A.    Yes.

23          Q.    And do you know if they're a declining or  
24   an expanding producer?

25          A.    Carpenter Farms or Yakima Chief Ranches?

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1 Q. Yakima Chief Ranches.

2 A. That would be definitely a declining  
3 producer.

4 Q. Okay. And do you know why it is they are  
5 a declining producer whereas your own operation, you've  
6 sort of indicated, is fairly stable?

7 A. Well, again, we're getting a little bit  
8 into proprietary information, but I can say that the  
9 ownership of Yakima Chief Ranches, to my knowledge, has  
10 decided to transition out of hop production in general.

11 Q. And has the acreage they've taken out of  
12 hop production gone into producing other commodities?

13 A. Part of it has.

14 Q. And has some of the acreage been sold?

15 A. Part of it has.

16 Q. And the production in other commodities  
17 is more profitable than the hops production.

18 A. I don't know. I'm not ready to say that.

19 Q. And isn't it true that over the last 10  
20 years or so that the acreage in hops has been gradually  
21 reducing?

22 A. I think that's a fair assessment. Yeah.

23 Q. And is that an indication, in your view,  
24 that the market forces is inherent and the free market  
25 are responding to the changing demand characteristics?

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1 A. I think that's a fair assessment.

2 Q. All right. So the free market forces are  
3 acting in such a way as to bring the current supply in  
4 line with demand.

5 A. I would certainly hope so.

6 Q. Okay. That's it. Thank you, Mr.  
7 Carpenter.

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE: Any additional  
10 cross-examination of this witness? Ms. Deskins.

11 \*\*\*

12 BY MS. DESKINS:

13 Q. Mr. Carpenter, I had a couple questions  
14 for you. One, you have a farm. Can you tell us where  
15 your farm is located and a general size for it?

16 A. Yeah. Our farm is located almost in the  
17 middle of the Yakima Valley in Washington State in the  
18 Dranger, Sunnyside area. And I believe we're farming --  
19 I don't want to get into specific acreages by crop, but  
20 I think we're farming 1100 acres, something like that.

21 Q. Okay. And how long have you been in the  
22 farming industry?

23 A. Well, I'm the 5th generation in the  
24 Yakima Valley and I believe my family farmed before that  
25 as well so we've been here since -- in the Yakima Valley

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1 since the late 1870's.

2 Q. Okay. And also you were asked some  
3 questions about the Proponent Committee. And I'm just  
4 trying to clarify this. When you said -- when you were  
5 responding to questions about the committee, were you  
6 saying the people who were on the committee were people  
7 who were part of the group? I'm trying to understand  
8 how it's set up.

9 A. The Proponents Committee?

10 Q. Right. Is there a committee and the  
11 people are just members of the committee but they  
12 represent another group of people. Is that how it  
13 works?

14 A. No. I think it's fair to say that  
15 Proponents Committee represents a pretty good cross-  
16 section in terms of grower size. We've got some large  
17 growers involved. We've got some small growers  
18 involved. But in terms of representing formally  
19 different segments of the industry, I don't think that's  
20 the case.

21 Q. Okay. That's all the questions I had.  
22 Thank you.

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE: All right. Yes.

25 \*\*\*

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1 BY MS. FINN:

2 Q. Mr. Carpenter, you mentioned the Hop  
3 Growers of America. What is their primary purpose?

4 A. The Hop Growers of America is our  
5 national organization. It's -- the executive committee  
6 is made up of growers from all three growing regions.  
7 And they don't deal, necessarily, with, you know,  
8 research and that type of thing. That's -- our  
9 respective state commissions deal with that. But it's  
10 just kind of a national organization. They organized  
11 the annual convention. They are doing some work on  
12 promoting American hops around the world and just  
13 general industry governance issues.

14 Q. Okay. And how are they funded?

15 A. Boy. I'd almost like to defer that to  
16 some other members who are on that Board, but I believe  
17 it comes from a percentage of the assessments. I should  
18 -- is that where it comes from.

19 Q. I was just wondering is it like a  
20 voluntary program.

21 A. I think it's funded mandatorily from the  
22 different commissions.

23 Q. And it does include all of Idaho and  
24 Oregon, Washington and California?

25 A. That's correct to my knowledge.

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1 Q. Are there other trade associations that  
2 deal with hops?

3 A. Not to my knowledge.

4 Q. Okay. That's all I have.

5 \*\*\*

6 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
7 Finn. By the way, when the Government participants in  
8 the hearing ask questions they are neither opponents and  
9 proponents and their time is not counted. Any other  
10 cross-examination? Yes, Dr. Hinman?

11 \*\*\*

12 BY DR. HINMAN:

13 Q. To follow up on the Hops Growers of  
14 America, the government submitted some data based  
15 entirely on government sources. Is it true that the  
16 Hops Growers of America publishes an annual statistical  
17 compendium that incorporate a great deal of data from  
18 the same sources plus a great deal of industry data?

19 A. Yeah. That's true.

20 Q. Does -- for the completeness of the  
21 economic record of this hearing, is the Proponent  
22 Committee considering putting into evidence a number of,  
23 you know -- the current and say a number of past issues  
24 to help understand, you know, the economic situation of  
25 the industry?

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1           A.    Yes.  I think that is our -- that's one  
2 of our goals.

3           Q.    Okay.  Thank you.

4                               \*\*\*

5           ADMINISTRATIVE LAW JUDGE:       Thank you, Dr.  
6 Hinman.  Any other cross-examination?  There being none,  
7 Mr. Monahan, do you have any additional questions?

8           MR. MONAHAN:   Yes.  Does Your Honor know a  
9 good place for lunch?

10          ADMINISTRATIVE LAW JUDGE:       I think I'll be  
11 eating right here hopefully.  All right.  How long would  
12 you like to take for lunch, Mr. Monahan?

13          MR. MONAHAN:   I'd defer to others present.

14          ADMINISTRATIVE LAW JUDGE:       All right.  Any  
15 suggestions?  Would an hour be sufficient?  90 minutes?  
16 No.  Too much?  Hour and 15 minutes.

17          MS. DESKINS:   How about an hour and 15 and  
18 that way people having any copying to do this would be a  
19 good opportunity to do that?

20          ADMINISTRATIVE LAW JUDGE:       Please be back  
21 and ready to go at 1:45.  Thank you.

22                               \*\*\*

23       [Off the record.]

24       [On the record.]

25                               \*\*\*

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1 ADMINISTRATIVE LAW JUDGE: We're back on  
2 record at 1:49 p.m. I'd like just to clarify whether  
3 any copies of the document that was to be photocopied  
4 have been distributed at this point. Mr. Monahan?

5 MR. MONAHAN: Hasn't happened, Your Honor.  
6 We're gathering our forces this afternoon and we will  
7 have comprehensive copies of all of the statements  
8 available for the court reporter and other parties at  
9 the conclusion of today's hearing before tomorrow.

10 ADMINISTRATIVE LAW JUDGE: All right. And  
11 the document that is Exhibit -- let's see...

12 MR. MONAHAN: 15.

13 ADMINISTRATIVE LAW JUDGE: ...15 -- yes --  
14 do you have any copies of that yet?

15 MR. MONAHAN: I'm afraid I don't, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: Okay. And do  
17 you want to move the admission of Mr. Carpenter's  
18 statement at this time or do you want to wait until a  
19 later time.

20 MR. MONAHAN: I'm happy to move for it now.  
21 I was anticipating -- I guess I should say I did not  
22 anticipate that he would be on the stand that long and I  
23 was anticipating moving for the admission of 7 through  
24 14 at the conclusion of the Proponents testimony. But  
25 it probably makes more sense to move for it now, Your

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1 Honor. So consider it moved.

2 ADMINISTRATIVE LAW JUDGE: All right. Is  
3 there any objection to the admission into evidence of  
4 Exhibit 7, which is Mr. Carpenter's statement? There  
5 being none, Exhibit 7 is hereby admitted into evidence.  
6 All right. I'm aware that Mr. Carpenter remains  
7 available for recall and that at this time the  
8 Proponents are yielding so that -- Mr. Moody, is this  
9 your witness?

10 MR. MOODY: No, Your Honor. He mentioned  
11 he needed to testify today because of his plane  
12 connections.

13 ADMINISTRATIVE LAW JUDGE: All right. Very  
14 good. Would you identify yourself please?

15 MR. DECELLE: Yes, Your Honor. Thank you.  
16 My name is Arthur, A-r-t-h-u-r, DeCelle, D-e-C-e-l-l-e.  
17 I am the executive vice president and general counsel of  
18 the Beer Institute, which is a trade association  
19 representing domestic and multi-national brewers as well  
20 as suppliers of agricultural and other materials to the  
21 brewing industry. Our members product approximately 90  
22 percent of the beer...

23 ADMINISTRATIVE LAW JUDGE: Just a moment.  
24 Now that you've identified yourself I'll swear you in.

25 MR. DECELLE: Oh, I apologize.

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1 ADMINISTRATIVE LAW JUDGE: No. That's  
2 fine. You have a statement that you'll be reading into  
3 the record. Is that correct?

4 MR. DECELLE: Yes, Your Honor.

5 ADMINISTRATIVE LAW JUDGE: And would you  
6 also like that marked as an exhibit so that it can be  
7 taken into evidence that way as well or will it be  
8 sufficient that the transcript contains your testimony?

9 MR. DECELLE: No. I think the transcript  
10 will be adequate.

11 ADMINISTRATIVE LAW JUDGE: All right. Very  
12 fine. Do you consider yourself either in favor of the  
13 proposals or against the proposals that are being  
14 considered here?

15 MR. DECELLE: We are against the proposal,  
16 Your Honor.

17 ADMINISTRATIVE LAW JUDGE: All right.  
18 Thank you.

19 \*\*\*

20 [Witness sworn]

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: Thank you. You  
23 may proceed.

24 MR. DECELLE: Okay. Thank you. As I've  
25 already outlined the purpose of the beer industry trade

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1 association, the Beer Institute, which I represent.  
2 Beer is one of the few consumer products still primarily  
3 made in the United States. 90 percent of the beer sold  
4 in the United States is produced here, something that's  
5 very unusual for most consumer product categories these  
6 days. Beer is also a mature product category. Over the  
7 last 30 years, our industry has been very stable with  
8 per capita consumption remaining about the same and  
9 increases or declines in total volume under two percent  
10 in any given year over the entire period from the 1970's  
11 to the present. There was one exception in 1990 where  
12 volume increased in anticipation of a major excise tax  
13 increase. And I have two charts that I would like to  
14 enter into the record as exhibits at this point in time.

15 ADMINISTRATIVE LAW JUDGE: You've handed me  
16 a chart that's entitled Beer Capita -- excuse me -- "Per  
17 Capita Beer Consumption." And I'm going to need one  
18 copy to be the official record copy. And have you  
19 distributed any of these other copies at this point?

20 MR. DECELLE: No. We have not.

21 ADMINISTRATIVE LAW JUDGE: All right.  
22 Mr. Monahan, would you come forward and take one and  
23 Mr. Moody -- would you deliver that to Mr. Moody and  
24 Mr. Monahan, would you deliver that to Ms. Deskins?

25 MR. MOODY: Your Honor, could we make those  
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1 16 and 17? Is that the next two numbers in line?

2 ADMINISTRATIVE LAW JUDGE: Yes. Let's mark  
3 this one -- well, no -- well, I do have one -- this is  
4 the record copy though.

5 MR. DECELLE: I have additional if you...

6 ADMINISTRATIVE LAW JUDGE: How many more do  
7 you have?

8 MR. DECELLE: Two or three.

9 ADMINISTRATIVE LAW JUDGE: Oh, good. I  
10 would like both economists to have these. I'd like you  
11 to make a couple of trips. Would you first just deliver  
12 the "Per Capita Beer Consumption" to the two economists.  
13 All right. And now of the other -- let's see -- the  
14 "Per Capita Beer Consumption Exhibit will be Exhibit 16.  
15 And your other chart?

16 MR. DECELLE: The other chart is entitled  
17 "U.S. Domestic Brewer Output."

18 ADMINISTRATIVE LAW JUDGE: All right.  
19 We'll make that Exhibit 17. And did you also have some  
20 additional ones of that so that each of the economists  
21 could have one of those?

22 MR. DECELLE: Yes, Your Honor.

23 0 ADMINISTRATIVE LAW JUDGE: All right.  
24 Good. All right. We'll go off record while those are  
25 distributed.

1 \*\*\*

2 [Off the record.]

3 [On the record.]

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE: All right.

6 We're back on record now at 1:56. You may proceed, Mr.  
7 DeCelle.

8 MR. DECELLE: Thank you. The purpose of both  
9 charts is to show the relatively stable nature of the  
10 industry and the fact, again, that production has been  
11 relatively stable as well as consumption by American  
12 consumers for extended period of time, just to give you  
13 an overview of the beer industry, which is the primary  
14 consumer of hops, as most of you folks know. Given that  
15 background and demonstrated by the charts, profitability  
16 of our major members has come from extraordinary efforts  
17 to reduce costs and to gain efficiencies at all stages  
18 of the production process. Substantial brewer  
19 consolidation has occurred over the last several years.  
20 In our own organization just since '94, when I joined,  
21 we've gone from five major brewers to three. So our  
22 members have not been immune to the challenges of the  
23 free market and we can certainly emphasize with the  
24 situation facing our fellow industry members in the hops  
25 -- those who cultivate hops. The brewing industry has a

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1 long history of working with U.S. hops growers to expand  
2 the variety and quality of hops used in our industry.  
3 Over the years we've supported various efforts,  
4 University of Oregon, the University of California  
5 system and elsewhere as well as many private initiatives  
6 to improve, as I said, the quality and variety.  
7 Cultivation in this country dates back over 1000 years  
8 in Europe and early -- in German and Dutch settlements  
9 in New York and the east grew hops shortly after their  
10 arrival. And larger scale production began here in the  
11 early 1800's. Began on the east coast and moved west  
12 over time with the growth of our country. As evidenced  
13 by the states that are involved in this marketing order,  
14 the primary growth area of hops in the United States is  
15 right here in the northwest. International competition,  
16 however, is intense with the U.S producing about 25  
17 percent of the worldwide crop and substantial production  
18 in Europe, Asia, Africa and Australia. The proposed  
19 marketing order presupposes that an administrative  
20 system can be developed to deal with structural economic  
21 forces that have resulted in an oversupply of hops. Any  
22 such effort guided by the Federal Government, is  
23 contrary to the current administrations recently stated  
24 Agricultural policy that recognizes that -- and I'm  
25 quoting here -- "The market places the best guide for

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1 allocating resources and provides the most objective  
2 reward for efficiency and good management." And that  
3 comes from a USDA statement entitled "Food and  
4 Agriculture Policy, Taking Stock for the New Century."  
5 It came out earlier this year, 2003. The current  
6 business and social situation confronting American  
7 farmers is apply described as a competitive, consumer-  
8 driven, and rapidly changing, highly interdependent,  
9 lending the efforts of many industries to add value to  
10 farm sector products. As the sole consumer of hops,  
11 brewers are primarily responsible for adding value to  
12 the crops of hops growers and other agricultural  
13 producers. The future of the U.S. hops industry is tied  
14 directly to many factors beyond the reach of  
15 agricultural marketing orders. Those factors include  
16 growth, product changes, technological advances in the  
17 worldwide brewing industry, international competition,  
18 and crop yields as well as exchange rates. Prior U.S.  
19 experience with hops marketing orders shows that they  
20 have not provided effective, long-term relief to  
21 American growers. Since 1938, the Department of  
22 Agriculture has administered three different marketing  
23 orders that applied to growers in the same region that  
24 would be covered under the proposed order being  
25 considered today. The first hops marketing order

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1 remained in place from 1938 until 1994. The second was  
2 implemented in 1949 and lasted until 1952. And the  
3 third was enforced between 1966 and 1986. All three  
4 helped -- all three failed to help U.S. farms as I said.  
5 Artificial constraints on acreage, quota systems and  
6 purchase pool arrangements simply did not adequately  
7 anticipate the effects of external market forces in the  
8 past and they will not be able to do so in the current  
9 commercial environment. Beyond the lessons of history  
10 and international market forces beyond our control, a  
11 fundamental goal of marketing orders and U.S. policy  
12 would be thwarted by imposition of a marketing order of  
13 this time, and that is the maintenance of high-quality  
14 produce. Brewing is an art form that combines centuries  
15 of tradition with modern methods of production and  
16 quality control. U.S. and international brewers have  
17 established their respective reputations through decades  
18 of effort and attention to detail. A marketing order  
19 could hurt growers who have worked to meet the standards  
20 of specific brewers or to develop new varieties to meet  
21 the demands of our nations craft breweries, which often  
22 produce unique seasonal products. The marketing order  
23 would set back the efforts of growers to meet basic  
24 customer needs, such as quality and variety. Earlier  
25 this year, the USDA requested alternatives to the

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1 proposed marketing order. At the time, and again for  
2 the hearing record today, the Beer Institute  
3 respectfully submits that no form of marketing order  
4 will alleviate the current market place conditions but  
5 would only serve to disrupt and damage the industry and  
6 that the department should not establish a new order.  
7 We would be pleased to provide the Department with any  
8 additional background information on the brewing  
9 industry that will aid in your decision-making process,  
10 and I appreciate the opportunity to appear here today.

11 ADMINISTRATIVE LAW JUDGE: Mr. DeCelle, I'd  
12 actually like to have your statement as an exhibit as  
13 well as your having read it into the record.

14 MR. DECELLE: Okay.

15 ADMINISTRATIVE LAW JUDGE: Do you have any  
16 objection to that?

17 MR. DECELLE: No, I don't, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right.

19 MR. DECELLE: If you'd like to have it.

20 ADMINISTRATIVE LAW JUDGE: I just wanted to  
21 make sure it is accurately reflected and the fact that  
22 you have it typed out I think would ensure that.

23 MR. DECELLE: Okay. Thank you, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: All right. I'm  
25 going to mark Mr. DeCelle's statement as Exhibit 18.

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1 MR. DECELLE: This one has some markings on  
2 it. Can I provide you with a...

3 ADMINISTRATIVE LAW JUDGE: You may. Can  
4 you do that...

5 MR. DECELLE: ...typed...

6 ADMINISTRATIVE LAW JUDGE: ...before you  
7 have to leave today?

8 MR. DECELLE: Yes. I can.

9 ADMINISTRATIVE LAW JUDGE: That would be  
10 great. All right. Mr. DeCelle is now available for  
11 cross-examination. Who would like to begin? Ms.  
12 Deskins?

13 MS. DESKINS: I just had a couple of  
14 questions. On those two exhibits that you passed out,  
15 where did you get the information to make those  
16 exhibits?

17 MR. DECELLE: The information comes from a  
18 variety of sources. Beer is heavily taxed and  
19 regulated, as you know. And the tax and trade bureau of  
20 the treasury department is one major source. First of  
21 all, let me back up a little. The brewers are the major  
22 source. The major domestic brewers provide the Beer  
23 Institute with volume statistics that we publish on a  
24 monthly basis. And what we do is take the barrelage of  
25 the major companies and importers and then make an

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1 estimate of what the 1800 smaller brewers and craft  
2 brewers in the country produce and then check that  
3 against government figures for tax collection purposes,  
4 both federal and state.

5 MS. DESKINS: Okay. And both of these  
6 exhibits were made by the Beer Institute?

7 MR. DECELLE: Correct.

8 MS. DESKINS: Okay. And also you -- do you  
9 have figures on the sales between countries other than  
10 the U.S. of hops?

11 MR. DECELLE: We do -- not that I know of. A  
12 lot of our import and export information comes from the  
13 Commerce Department but I am not sure that they break  
14 out the hops -- I can find that out for you certainly  
15 within the next few days before the hearing record  
16 closes.

17 MS. DESKINS: That's not necessarily. I was  
18 just wondering if you might have known that information,  
19 but you don't need to look that up.

20 MR. DECELLE: Okay.

21 MS. DESKINS: I have no further questions.

22 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.  
23 Deskins. Ms. Dec.

24 MS. DEC: I have a couple. Mr. DeCelle, I  
25 don't know a whole lot about brewing beer so if you

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1 would give me a little bit of background. Can you hear  
2 me okay? In a -- let's say a gallon of beer, how much  
3 hops is used to produce beer? I don't have any sense of  
4 the proportions.

5 ADMINISTRATIVE LAW JUDGE: Just a moment.  
6 Before you answer, I'm not sure the people in the back  
7 of the room could hear you, Ms. Dec. Would you repeat  
8 your question? Just be a little closer to the mike.

9 MS. DEC: Okay. I was wondering, as far as an  
10 ingredient in beer, how much -- how many hops, how much  
11 hops is used in brewing beer? Do you understand that?

12 MR. DECELLE: Yes. But there are significant  
13 variations from one type of beer to another and there's  
14 also some federally recommended ratios for product  
15 identification purposes. I don't have that with me. I  
16 actually have it some -- I probably have it in my  
17 briefcase, the recommended government numbers. But you  
18 will have a couple of witnesses from -- or member  
19 companies that could give you a more specific quantity  
20 ratio. But I can tell you that there's a significant  
21 difference. For example, the light beer category is an  
22 area that's grown from non-existence in the 1970's to  
23 over 40 percent of the total market. And light beer, by  
24 its nature, requires less hops. On the other hand,  
25 there's a lot of small producers that use a lot larger

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1 amounts of hops in their ales and heavier beer products.  
2 Hops is basically the spice of beer so they have a --  
3 tend to have fuller taste products. And then there are  
4 the flavored malt beverage sector, which is relatively  
5 new. It's about three percent of the total market,  
6 which use very little hops at all; just a minimum to  
7 meet the federal standards.

8 MS. DEC: I believe in your testimony you made  
9 a statement that any marketing order would thwart the  
10 efforts to provide brewers with the quality they need.  
11 Could you explain a little bit what you meant by that?

12 MR. DECELLE: Yes. Several of our member  
13 companies have informed us that they have established  
14 relationships with suppliers either to meet specific  
15 variety needs or other standards, quality control  
16 standards that the brewers have established. And if  
17 that's true of a major brewer and a large consumer of  
18 those hops, then the only way that one of their long-  
19 term providers could continue to do so would be to  
20 acquire base from another grower, as I understand the  
21 process.

22 MS. DEC: Okay. Thank you.

23 ADMINISTRATIVE LAW JUDGE: Mr. Olson.

24 MR. OLSON: Thank you, Your Honor. I was  
25 wondering if you could provide some general statistics

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1 in terms of the hop usage, how much of it is for  
2 domestic beer production comes from hops grown within  
3 the proposed production area and also I was wondering if  
4 you had any access to information regarding those years  
5 under the marketing order, whether there were different  
6 percentages of utilization of domestic-grown hops for  
7 beer production in the United States?

8 MR. DECELLE: The answer to the first part of  
9 your question, I would respectfully defer to the brewer  
10 representatives who actually purchase, because I don't  
11 know the breakdown. I'm told that we spend -- we  
12 purchase roughly half of the U.S. hops production, which  
13 -- and I'm not aware of any significant production  
14 outside the three-state area. But as far as the  
15 imports, no, I'm not certain of that and that varies  
16 from company to company. And at least one and possibly  
17 two or three will be represented here.

18 MR. OLSON: In terms of trends, has it  
19 remained relatively stable in recent years?

20 MR. DECELLE: That -- I can't respond to  
21 that. But the second part of your question, can you  
22 restate it. I know you had a second...

23 MR. OLSON: Yeah. What I was trying to get  
24 at is whether you had any information regarding whether  
25 there has been changes in the percent utilization of

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1 domestic hops for domestic brewers when a marketing  
2 order was in place or was not in place.

3 ADMINISTRATIVE LAW JUDGE: Okay. If we're  
4 able to find -- well, I know some of the statistics --  
5 production statistics that are kept by the tax and trade  
6 bureau of the treasury department include hops purchases  
7 and I'm pretty confident that those numbers go back to  
8 that '66 to '86 period. So it's possible that we could  
9 figure out the answer to that question for that period.  
10 But I don't have it with me.

11 ADMINISTRATIVE LAW JUDGE: Thank you. Ms.  
12 Finn.

13 MS. FINN: I did have one question. I just  
14 have one question, a follow-up to Ms. Dec's question  
15 about how much hops is needed in beer. Since the  
16 consumers are demanding or consumer trends are more  
17 towards preferring lighter beers...

18 MR. DECELLE: Correct.

19 MS. FINN: ...which require less hops, has the  
20 trend been that less hops are needed in making beer than  
21 say there were -- it was 20 years ago?

22 MR. DECELLE: Yes. I'm not sure that that's  
23 the only reason, but it's certainly true that less hops  
24 are needed for a substantial amount of the U.S.  
25 production today and that those brands didn't even exist

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1 say 30 years ago and that during the -- while the other  
2 marketing order was enforced during that period.

3 MS. FINN: Thank you.

4 ADMINISTRATIVE LAW JUDGE: Dr. Hinman.

5 DR. HINMAN: Yes. Mr. DeCelle, you mentioned  
6 that you have a -- the Institute puts out a monthly  
7 publication. Is that correct?

8 MR. DECELLE: Yes, sir.

9 DR. HINMAN: And is this data to submit  
10 something that's published in there? The reason I'm  
11 asking is I guess two things I could get from that is  
12 would you be able to actual supply us with the actual  
13 numbers behind these graphs, just a table, and then  
14 secondly an alternative to that or in addition to that  
15 would there be a series of maybe annual summaries of  
16 those publications that you could submit as evidence  
17 that could also improve the completeness of the economic  
18 record?

19 MR. DECELLE: Yes. We publish full tables  
20 with the break out of the information reflected in the  
21 charts. And actually, we no longer publish -- since  
22 about '99 we don't publish it any more. It's on our  
23 website, but nevertheless, we can get you the more  
24 detailed numbers and fuller charts explaining the year-  
25 to-year trends.

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1 DR. HINMAN: Okay. And then a second  
2 question. And this may be answered by -- you said other  
3 members are going to testify. But the -- in the brewing  
4 process, we've heard about, you know, this whole hops  
5 and pellets and extract. And could you explain a bit  
6 about some of the changes in the brewing process from,  
7 you know, a trade association brewer's point of view  
8 about how the changing needs and utilization of each  
9 type -- how it has changed and how it affected sort of  
10 the demand for hops?

11 MR. DECELLE: I can't tell you how it affects  
12 the overall demand. I can tell you that each company --  
13 each of our major companies as well -- and there's  
14 almost an endless variety among the smaller brewers --  
15 uses hops at various stages in the production process.  
16 Sometimes two or three times in the brewing process hops  
17 are added. And I'm aware of one major brewer that uses  
18 almost exclusively extracts and one that uses almost  
19 exclusively raw hops. So there's quite a variation  
20 there. And that's proprietary -- and maybe not  
21 propriety in the sense of what they use, but each  
22 process is different from and varies widely among the  
23 brewers.

24 DR. HINMAN: Okay. Thank you.

25 ADMINISTRATIVE LAW JUDGE: Before I ask for  
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1 further cross-examination, Mr. DeCelle, is today the  
2 only day you'll be present at this hearing? We're hear  
3 all this week and in Yakima, Washington all of next  
4 week.

5 MR. DECELLE: Yes, Your Honor. I've been  
6 traveling for a week and I have seven children. So I'm  
7 already in deep, hot water.

8 ADMINISTRATIVE LAW JUDGE: How would  
9 propose to furnish to us by the end of next week any  
10 follow-up information based on the questions you  
11 fielded?

12 MR. DECELLE: Well, we'd be happy and try to  
13 fulfill any process that you suggest to us to get the  
14 information in your hands and into the record. Would it  
15 be possible for members -- any of our members who are  
16 testifying to submit it or is there an alternative that  
17 you have used in the past that...

18 ADMINISTRATIVE LAW JUDGE: Perhaps it would  
19 be best for you to supply it through witnesses still to  
20 come even though they might not be able to answer cross-  
21 examination about it if they could represent that you  
22 had forwarded it. But you would need to attach, if you  
23 have a statistic or something, some statement as to why  
24 you are furnishing it. In other words, this is  
25 responsive to the inquiry about...

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1 MR. DECELLE: Okay. So Dr. Hinman's  
2 question, for example...

3 ADMINISTRATIVE LAW JUDGE: Yes.

4 MR. DECELLE: Okay. Is there any process for  
5 accepting written follow-up or...

6 ADMINISTRATIVE LAW JUDGE: Yes. We could  
7 certainly accept it. We would rather have written  
8 statements while a person is available to be cross-  
9 examined about them.

10 MR. DECELLE: Certainly.

11 ADMINISTRATIVE LAW JUDGE: But I think it  
12 would be better for us to have whatever information you  
13 can provide even if you're not here to field questions  
14 rather than not to have the information at all.

15 MR. DECELLE: Okay. Thank you, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: Do you have --  
17 before we go on, I know there are other questions for  
18 you. Do you want to clarify with any of the government  
19 questioners what is it they need or do you recall pretty  
20 much the tenor of their questions.

21 MR. DECELLE: With response to the regular --  
22 the hops usage question, I do believe that I could  
23 provide that here while I'm still with us and as well as  
24 my written statement. I think Dr. Hinman's question and  
25 request for the follow-up supporting information -- is

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1 that the only other one pending?

2 DR. HINMAN: No. I asked for either/or or  
3 actually, the numbers behind the particular graphs, but  
4 if you can be more complete to submit entire -- if you  
5 have annual [inaudible] summaries that would include  
6 this that would certainly be welcome as well for a  
7 number of years back again to complete the historical  
8 records since you have access to industry data from your  
9 members that the government would not have.

10 MR. DECELLE: Correct. Yes. Okay. So you  
11 want also a more comprehensive survey of the industry  
12 data.

13 DR. HINMAN: Yes. That is correct.

14 MR. DECELLE: Okay.

15 ADMINISTRATIVE LAW JUDGE: Dr. Hinman, what  
16 years would you like him to focus on?

17 DR. HINMAN: Well, perhaps the years covered  
18 in the graph. If you have -- for instance, obviously  
19 monthly reports would be -- if you have annual reports  
20 covering, you know, this period back as far as your  
21 graph, that would be very helpful.

22 MR. DECELLE: Okay.

23 ADMINISTRATIVE LAW JUDGE: All right.  
24 Additional cross-examination of Mr. DeCelle. Mr. Moody?

25 MR. MOODY: Just one quick area of inquiry.

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1 On the switch to the increasing demand for light beer is  
2 that change in consumer preference something that's well  
3 known to the hop producing part of the industry?

4 MR. DECELLE: Well, I can't speak for them.  
5 I would assume it is because it certainly affects both  
6 the varieties that are used as well as the overall  
7 volume.

8 MR. MOODY: And that increase in market  
9 share for light beer has been a fairly gradual change?

10 MR. DECELLE: Well, it's gradual but it's  
11 dramatic. It's gradual since because it's occurred  
12 since the 1970's, but it's fairly steady and upward --  
13 fairly steady upward trend at the expense. As you can  
14 see, the overall domestic production is relatively  
15 stable. So it's basically within the total beer volume  
16 category that a substitution for light beer for premium  
17 beers has occurred over time. And you can -- it's very  
18 dramatic when you look over the whole period. It comes  
19 close to a perfect substitution.

20 MR. MOODY: Right. But in your view, is  
21 that the sort of change that the hops industry can  
22 respond to according to free market forces without  
23 causing undue disruption or chaos?

24 MR. DECELLE: Yes. I believe they can. And  
25 again, we have -- our members have very long standing

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1 relationships with the industry. And I assume that  
2 there are fairly well known trends.

3 MR. MOODY: Thank you.

4 ADMINISTRATIVE LAW JUDGE: Other cross-  
5 examination for Mr. DeCelle? Let's start with Mr.  
6 Monahan.

7 MR. MONAHAN: Thank you, Your Honor. Brendan  
8 Monahan for the record. Your Honor, I have a couple of  
9 questions and I believe the Hop Growers to my left have  
10 some questions as well. I would just ask, Mr. DeCelle,  
11 I understand from your statement that your members  
12 include the producers of over 90 percent of the beer  
13 sold in the United States. Is that right?

14 MR. DECELLE: That's correct.

15 MR. MONAHAN: How long have you been with the  
16 Beer Institute?

17 MR. DECELLE: Nine years.

18 MR. MONAHAN: What did you do before that?

19 MR. DECELLE: I was a staffer for two members  
20 of congress and two congressional committees.

21 MR. MONAHAN: Okay. Is it fair to say that  
22 your involvement with the beer industry started nine  
23 years ago?

24 MR. DECELLE: Correct.

25 MR. MONAHAN: And you have no experience in  
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1 the actual hop industry in terms of growing or handling  
2 hops. Is that accurate?

3 MR. DECELLE: That's correct.

4 MR. MONAHAN: You have no personal knowledge  
5 of the way that the prior hop marketing orders were  
6 administered. Is that right?

7 MR. DECELLE: Other than what I've read in  
8 various proceedings of the industry from different  
9 periods.

10 MR. MONAHAN: Okay. One of your remarks had  
11 to do with the efficiency or success of the prior hop  
12 marketing orders. And if I can quote you, I believe you  
13 said all three failed to help U.S. Farmers. Is that  
14 right?

15 MR. DECELLE: Correct.

16 MR. MONAHAN: You actually weren't involved  
17 with those hop marketing orders. Were you?

18 MR. DECELLE: No. I was not.

19 MR. MONAHAN: That is information that you  
20 believe you've required through something you've read.

21 MR. DECELLE: Correct.

22 MR. MONAHAN: One of the statements you made  
23 was that your members -- do your members pay a fee by  
24 the way.

25 MR. DECELLE: Yes.

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1 MR. MONAHAN: Okay. Your fee-paying members  
2 have been successful at reducing costs. Is that right?

3 MR. DECELLE: That's correct.

4 MR. MONAHAN: And one of their costs is hops.  
5 Is that right?

6 MR. DECELLE: Yes.

7 MR. MONAHAN: So it's fair to say that  
8 they've successfully reduced the amount of money they  
9 pay for hops. Is that right?

10 MR. DECELLE: Well, I'm not aware of their  
11 individual transactions, but I know we have supplier  
12 members as well as brewer members and there's enormous  
13 cost-cutting pressure for anybody doing business in the  
14 United States these days. And our members, as I pointed  
15 out, are all here pretty much.

16 MR. MONAHAN: Okay. Are you aware what the  
17 cost of production is for hops? Have you ever reviewed  
18 numbers like that?

19 MR. DECELLE: No.

20 MR. MONAHAN: Do you know if your members pay  
21 for hops more or less than the cost of production?

22 MR. DECELLE: No. I do not.

23 MR. MONAHAN: If in fact they were paying  
24 less than the cost production that would be something in  
25 their financial interest to preserve. Is that right?

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1           MR. DECELLE:   Well, it might be in their  
2   financial interests, but I'm not sure it would be in  
3   their long-term interest.  I mean these are long-term  
4   relationships that are essential to the quality of their  
5   products.  So I think it's more a matter of an equitable  
6   business relationship as opposed to attempting to get  
7   something for less than cost of production.

8           MR. MONAHAN:   Do you think that might be one  
9   of the reasons your organization is opposing the  
10  marketing order?

11          MR. DECELLE:   No.  I think the factors that I  
12  touched on before are more important.  As I said, it's  
13  an essential ingredient in the process and the idea that  
14  the hypothetical that I tried to laid out where a  
15  producer who had been successful in meeting the needs of  
16  a major brewer there's been a lot of consolidation.  So  
17  it's certainly plausible that successful producer would  
18  be forced to buy, you know -- essentially buy the right  
19  to meet one of his customer's needs from another grower.

20          MR. MONAHAN:   Who's Jeffery Becker?

21          MR. DECELLE:   He is the president of the Beer  
22  Institute.

23          MR. MONAHAN:   Are you aware that he submitted  
24  a letter to the AMS in the course of the comment period?

25          MR. DECELLE:   Yes, sir.

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1                   MR. MONAHAN:   In fact, your written remarks  
2                   and spoken remarks today borrow largely from his letter.  
3                   Is that right?

4                   MR. DECELLE:   That's correct.

5                   MR. MONAHAN:   One of the statements that he  
6                   made and that you made is that you believe the proposed  
7                   marketing order will not sufficiently deal with the  
8                   "structural economic forces that have resulted in an  
9                   oversupply of hops." I want to break that down into two  
10                  parts. Is it true that your members believe there is an  
11                  oversupply of hops?

12                  MR. DECELLE:   Well, the -- yes. I would say  
13                  it's true we believe that.

14                  MR. MONAHAN:   Okay. What are the structural  
15                  economic forces?

16                                   \*\*\*

17                  [Off the record.]

18                  [On the record.]

19                                   \*\*\*

20                  ADMINISTRATIVE LAW JUDGE:   Thank you.  
21                  We're back on record at 2:25 p.m. Mr. Monahan, would  
22                  you start that question again?

23                  MR. MONAHAN:   Thank you, Your Honor. Mr.  
24                  DeCelle, what are the structural economic forces that  
25                  have resulted in the oversupply of hops?

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1           MR. DECELLE:    I would say on the consumer  
2     side that temperance and health considerations have led  
3     to that leveling in the per capita consumption and  
4     actually decline in per capita consumption and leveling  
5     in the overall domestic production volume. I would say  
6     product taste with respect to light beer and flavored  
7     malt beverages. I would say the increasing  
8     internationalization of the industry, i.e., that there  
9     are a variety of different business agreements among  
10    major international producers. And I think those are  
11    probably the most significant.

12           MR. MONAHAN:   How about development of new  
13    varieties of hops with higher yields, higher alpha  
14    levels?

15           MR. DECELLE:   That's not an area that I'm as  
16    familiar with. I'm aware that that has made the brewing  
17    process more efficient or at least hop usage more  
18    efficient, but I don't know the impact of that.

19           MR. MONAHAN:   Those are all the questions I  
20    have, Your Honor.

21           ADMINISTRATIVE LAW JUDGE:    Thank you, Mr.  
22    Monahan. Who would like to begin for the Committee --  
23    Proponents Committee. Mr. Desserault.

24           MR. K. DESSERAULT:   Ken Desserault. Yes. I  
25    only have one question. Mr. Monahan took care of most

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1 of the other stuff I had. And the only one that I had  
2 is do you have any -- you know you stated that the other  
3 three marketing orders were ineffective. Do you have  
4 any reason to believe why the last order lasted for 20  
5 years if it was ineffective?

6 MR. DECELLE: Well, in my reading of the  
7 situation, I believe in that third marketing order the -  
8 - first of all, according to one of the publications  
9 that I read on the subject, a great deal of fluctuation  
10 had occurred in demand because of various crop failures  
11 elsewhere in the world and that marketing order was  
12 routinely subverted for that reason, folks, and  
13 extremely difficult to enforce. So that's the extent of  
14 my knowledge.

15 MR. K. DESSERAULT: Are you saying there were  
16 crop failures consistently during the 20-year period?

17 MR. DECELLE: No. At different points and  
18 that the U.S. growers were able to use both draw down on  
19 their own reserves and that in some cases the author  
20 accused them of violating the orders.

21 MR. K. DESSERAULT: That's all I have.

22 ADMINISTRATIVE LAW JUDGE: Thank you.  
23 Others on the Proponents Committee? Mr. Roy?

24 MR. ROY: You made some statements towards --  
25 that hop utilization has been increased, which leaves me

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1 to believe that they're using less hops in the beer. Is  
2 that correct?

3 MR. DECELLE: I'm sorry. Hop utilization you  
4 said...

5 MR. ROY: Yeah. You made some -- you made a  
6 statement about increasing hop utilization being more  
7 efficient, I guess, is the word I heard.

8 MR. DECELLE: Correct.

9 MR. ROY: Do you consider that trend to  
10 continue into the future?

11 MR. DECELLE: That I don't know. You would  
12 have to ask -- I would defer to the brewer people who  
13 have better technical knowledge.

14 MR. ROY: Do keep any records average usage of  
15 hops per barrel of beer?

16 MR. DECELLE: No. And as my understanding is  
17 that that varies markedly...

18 MR. ROY: I mean as an average...

19 MR. DECELLE: ...although I...

20 MR. ROY: ...as an average for the United  
21 States?

22 MR. DECELLE: Oh, I have -- the only thing I  
23 have along those lines is the guidance from the Treasury  
24 Department on hops, which I will provide for the record.

25 MR. ROY: So that would be -- okay. So we'll

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1 see the average usage of hops per barrel of beer over...

2 MR. DECELLE: Well, I can't say that it's an  
3 average. I can say it's their guidance for...

4 MR. ROY: I think...

5 MR. DECELLE: ...something that meets the  
6 standard for beer as classified...

7 MR. ROY: Oh, so just a federal...

8 MR. DECELLE: Federal law.

9 MR. ROY: ...regulation you mean.

10 MR. DECELLE: Correct.

11 MR. ROY: But is it not government figures  
12 that show the usage of hops in total and that could be  
13 cross-referenced with the amount of beer produced in the  
14 United States?

15 MR. DECELLE: Yes. I believe that can be  
16 done using either the Treasury Department numbers or...

17 MR. ROY: Could you -- do you have access to  
18 those numbers?

19 MR. DECELLE: I do. And I suppose we could -  
20 - what I can't tell you for certain is whether that  
21 information is assembled in any kind of a format. Right  
22 now I know the way to access it would be on the Treasury  
23 Department website or in one of their older publications  
24 for back years.

25 MR. ROY: Would you -- could you provide us

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1 with that information?

2 MR. DECELLE: I can try within whatever  
3 constraints...

4 ADMINISTRATIVE LAW JUDGE: Mr. Roy, what  
5 years are you interested in?

6 MR. ROY: I think there's been some reference  
7 to the years from '45 on. I'm not sure if we can go  
8 back that far, but as far back at least I think prior to  
9 the existing marketing order in '66. So if we go back  
10 to 1950 to the present I think that would be adequate.

11 MS. DESKINS: Judge Clifton, just for the  
12 record, Mr. DeCelle's going to give that to one of his  
13 members who will then introduce it as an exhibit. Is  
14 that what's going to happen?

15 ADMINISTRATIVE LAW JUDGE: I think that's  
16 probably the only avenue Mr. DeCelle has to get it to us  
17 while we're still in this hearing since he won't be back  
18 personally.

19 MS. DESKINS: Okay.

20 ADMINISTRATIVE LAW JUDGE: Back to Mr. Roy.  
21 What is it -- if you could tell me again...

22 MR. ROY: I think that we can look at some  
23 long-term trends of the usage of hops in beer, which is  
24 declining. And I think that has merit in this  
25 discussion.

1 ADMINISTRATIVE LAW JUDGE: All right. So  
2 any data that would tend to show the usage of hops in  
3 beer 1950 to the present.

4 MR. ROY: Correct.

5 ADMINISTRATIVE LAW JUDGE: All right.

6 MR. ROY: Thank you.

7 ADMINISTRATIVE LAW JUDGE: You're welcome,  
8 Mr. Roy. Yes. Tell me your name again please.

9 MR. NEWHOUSE: Thank you, my name is Dan  
10 Newhouse.

11 ADMINISTRATIVE LAW JUDGE: Thank you.

12 MR. NEWHOUSE: I'm a member of the Proponents  
13 Committee. Mr. DeCelle -- was that your name? Excuse  
14 me. I didn't quite hear it.

15 MR. DECELLE: Yes, sir.

16 MR. NEWHOUSE: Thank you. In your comments  
17 pertaining to the long standing relationship that many  
18 growers have with their customers, you made a statement,  
19 and I'm sorry I can't quote you exactly, that quality as  
20 well as availability of the product would suffer if a  
21 producer had to perform any market that had a marketing  
22 order involved in it. Could you expand on that and  
23 explain to me how that would come about, how that would  
24 happen?

25 MR. DECELLE: I'm not sure that I -- what I

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1 was trying to articulate was the idea that a grower who  
2 had striven to meet particular quality standards of a  
3 brewer that it was an unfair situation for that grower  
4 to have to purchase the right to grow an adequate supply  
5 to meet a brewer's need. So I did not mean to say that  
6 there was an automatic relationship between quality and  
7 the marketing order if you will. Is that...

8 MR. NEWHOUSE: That is what -- you used the  
9 word quality in your remarks and so that's -- I was just  
10 curious what would make you say that.

11 MR. DECELLE: Well, the idea was that a  
12 grower who had met the quality standards of a particular  
13 brewer would suffer unfairly if he or she were not able  
14 to adequately supply that brewer. They would have to  
15 purchase the right to grow an adequate supply for their  
16 customer. So in other words, their efforts to attain  
17 high-quality standards for their crop would, in effect,  
18 be impeded by the existence of a marketing order.

19 MR. NEWHOUSE: The act of acquiring the extra  
20 base allotment would impair the ability of the grower to  
21 produce a quality crop is what you're saying?

22 MR. DECELLE: No. I'm saying that they would  
23 be unfairly treated in that scenario, that the grower  
24 who had worked hard in the free market to meet quality  
25 standards and therefore had attained a given market

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1 share, might not be able to grow that market share  
2 without buying the base from another grower.

3 MR. NEWHOUSE: Okay. Thank you.

4 MR. DECELLE: Sure.

5 ADMINISTRATIVE LAW JUDGE: Were there any  
6 other questions from the Proponents Committee?

7 MR. SMITH: I have one, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Let's see.  
9 You're Mr. Gasseling? Oh, you're speaking.

10 MR. SMITH: Yeah.

11 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling  
12 was moving his microphone. Go ahead. Mr. Smith.

13 MR. SMITH: Mr. DeCeile, would you say at  
14 this time that your -- that the members of the Beer  
15 Institute are satisfied with what I'll call, for lack of  
16 a better term, the unregulated market that we have for  
17 hops or supply of hops?

18 MR. DECELLE: I believe they are. That's the  
19 information that's been communicated to me and the  
20 reason that our major members who help develop our  
21 policy statement have given.

22 MR. SMITH: Okay. And would you say that  
23 the members of the Beer Institute are currently  
24 satisfied with the quality of the hops that they're  
25 receiving from the U.S. industry?

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1 MR. DECELLE: I believe they are.

2 MR. SMITH: And they're satisfied with the  
3 price that they're paying for those hops currently?

4 MR. DECELLE: I can't comment on an  
5 individual brewer's satisfaction or lack thereof with...

6 MR. SMITH: But they didn't indicate...

7 MR. DECELLE: ...price or...

8 MR. SMITH: ...dissatisfaction with it.  
9 Did they?

10 MR. DECELLE: No. They did not.

11 MR. SMITH: Are you familiar or aware of  
12 how many domestic hops varieties are delivered to our  
13 nation's brewers every year?

14 MR. DECELLE: I don't have the total number.  
15 I have some compendiums that list them, but I have not  
16 counted them.

17 MR. SMITH: So would it surprise you to  
18 know that there is over 25 domestically grown varieties  
19 that are delivered every year?

20 MR. DECELLE: No. I wish I had guessed  
21 because that's what I was going to say, 20 or so.

22 MR. SMITH: Would it surprise you to know  
23 that there's several of those varieties that are grown  
24 by only one grower?

25 MR. DECELLE: No. That wouldn't surprise me.

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1                   MR. SMITH:     Okay.  So if your current  
2 members are satisfied with the unregulated system, would  
3 it surprise you or your members to know that, in fact,  
4 there is a concerted effort on behalf -- on behalf of  
5 those growers to balance the supply of those specialty  
6 varieties for the market?

7                   MR. DECELLE:   When you say to balance, do you  
8 mean -- do you have some kind of -- my view of this is  
9 that the varieties over time -- maybe not every single  
10 year to year -- would develop or the demand for  
11 particular varieties would develop with the industry and  
12 with the success of particular brands that used a  
13 particular form of hops.  That's why I wouldn't be  
14 surprised, as you stated, that you know, one major  
15 producer produced one variety or something like that  
16 because the industry is -- there's only 25 brands that  
17 make up about 80 percent of the total beer.

18                  MR. SMITH:     Right.  But actually the  
19 question was would it surprise you to know that, in  
20 fact, the growers of those varieties sit down every year  
21 and look at the supply of those varieties, the amount  
22 that was moved into the market place and adjust their  
23 supply for ensuing years up and down in order to make  
24 sure that the correct quantity of hops is available for  
25 those brewers?  Would that surprise you to know that?

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1 MR. DECELLE: No. I assume it takes place.

2 MR. SMITH: So basically then the current  
3 system that's unregulated actually does have some  
4 regulation involved in it. Maybe not formal regulation,  
5 but that growers are reacting to the demand for specific  
6 varieties.

7 MR. DECELLE: That growers -- yes. That's  
8 correct. I would concur with that.

9 MR. SMITH: Thank you.

10 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling.

11 MR. GASSELING: Yes. My name's Tom Gasseling.

12 A couple questions. You alluded to the fact that a  
13 grower who has a relationship because of this marketing  
14 order might not be able to continue that relationship.  
15 Are you aware of any specific instance where given this  
16 marketing order be implemented the way it's set up that  
17 that would, in fact, happen to any grower that's growing  
18 hops right now in the United States or is this just a  
19 supposition that it could happen?

20 MR. DECELLE: Well, it's just a supposition  
21 that it could happen.

22 MR. GASSELING: Okay.

23 MR. DECELLE: Given what you said this  
24 morning, I don't think they have the methodology  
25 established yet or at least it hasn't been...

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1 MR. GASSELING: Well, the methodology...

2 MR. DECELLE: ...put on the record. So I  
3 don't know how it would work in reality, but it makes  
4 sense given the fact that there are three major brewers  
5 and just given the structure of our industry that there  
6 would be certain brewers with established relationships  
7 that could be harmed as a result of the marketing order  
8 or even the growers could be harmed because they would  
9 have to purchase base allotment from another grower.

10 MR. GASSELING: Okay. Another question. You  
11 stated that there was a failure of the prior marketing  
12 orders. If you look on the table of the statistics --  
13 hop statistics that were supplied on Table 1, if you  
14 look...

15 ADMINISTRATIVE LAW JUDGE: Is this Exhibit  
16 5?

17 MR. GASSELING: It's -- yes. It's Exhibit 5.

18 MR. DECELLE: The statistical overview?

19 MR. GASSELING: Yes. It says the...

20 ADMINISTRATIVE LAW JUDGE: And which page  
21 please?

22 MR. GASSELING: On page 1. If you look at the  
23 last marketing order from 1966 to 1986 and you look at  
24 the total production, with the exception of 1980, '81  
25 and '82 and those can be attributed to the crop failures

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1 in Europe, wouldn't you agree that the production  
2 numbers in those 20 years are relatively stable?

3 MR. DECELLE: Yes. They certainly are.

4 MR. GASSELING: And then if we turn the page  
5 onto page 2 and we look from 1994 -- well, in fact, if  
6 you go even with starting with '87, after the marketing  
7 order went out on page 1, we fluctuate from 50 million  
8 all the way up to 70 -- almost 79 million and we're back  
9 down to 58 million. Do you consider that to be stable  
10 production?

11 MR. DECELLE: Well, they're not -- these are  
12 long-term trends.

13 MR. GASSELING: Well, that's exactly my point.  
14 That's what I'm getting to. I'm taking a 20-year period  
15 when there was a marketing order. You said it's  
16 relatively stable production. I'm asking you do you  
17 think from -- and if you want to take 20 years -- I  
18 guess I'm not very good at math so go back from 2002 20  
19 years, whatever that number is -- I don't know -- would  
20 it be 1982. Go to '82, but you'd have to go passed that  
21 so you can't. So start at 1987. And my question is do  
22 you consider those production levels to be relatively  
23 stable from 1987 to 2002?

24 MR. DECELLE: No. Well, I mean there's  
25 considerable fluctuations. But these numbers, in and of

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1 themselves, I mean in the '66 to '86 period, for  
2 example, brewer -- total production climbed considerably  
3 in that period driven primarily by U.S. demographics.  
4 So there are all kinds of potential explanations for  
5 these fluctuation, both long and short term, that I  
6 think are certainly explainable without reference to the  
7 marketing order.

8 MR. GASSELING: Well, the actual -- if you look  
9 at your domestic brewery output, the actual big  
10 increases came after '86. I mean I'm just looking at  
11 your number here. Domestic brewery output from 1980 on  
12 through to '86, yes, it increased, but from '86 on to  
13 the peak of '90's when there was a huge...

14 MR. DECELLE: Well...

15 MR. GASSELING: ...increase in beer output.

16 MR. DECELLE: '90 is explainable by the  
17 excise. The federal government doubled its excise tax  
18 increase effective January 1, 1991. And the reason for  
19 that is a huge amount of year-end loading in that year  
20 to avoid the effect of the excise tax increase. So that  
21 year is an anomaly.

22 MR. GASSELING: Okay. But...

23 MR. DECELLE: But nevertheless, the period  
24 through the '60's and '70's were a stronger growth  
25 because the demographics year to year improved markedly

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1 with the Baby Boom population being in their primary 21  
2 to 35 drinking years.

3 MR. GASSELING: Are you aware of any time  
4 during 1986 or at any time in these years on this where  
5 the U.S. hop industry actually shorted the U.S. brewing  
6 industry of product?

7 MR. DECELLE: No. I'm not aware of that at  
8 all, sir.

9 MR. GASSELING: So as far as you know, we've  
10 never -- the industry has never done that. But I want  
11 to clarify because I think this is a critical point.  
12 You're making an argument that the other marketing order  
13 didn't work. And by your own testimony you've stated  
14 that during that period production was stable.  
15 Irregardless of what the brewing trade did, we did  
16 increase a little bit as the beer -- because we had  
17 changes in varieties and everything, but the production  
18 was relatively stable. And by your own statement, after  
19 that, we have had a real unstable production level. And  
20 how you can say what we're doing now works and what we  
21 did 20 years ago -- or for 20 years doesn't work, I'm  
22 quite -- I don't quite understand. So thank you very  
23 much.

24 MR. DECELLE: Well, my point there or my  
25 explanation for that would be some of those other

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1 factors in terms of the structural market, consumer  
2 choices and other related issues that go directly to the  
3 volume of hops used.

4 MR. GASSELING: Okay. Then I guess you also  
5 made the comment then that there's been substantial  
6 changes in these past years with light beers and so  
7 forth. So if we had a stable -- we've had different  
8 situations in the past few years, but yet the production  
9 has gone all over the board. Yet, the 20 years the  
10 marketing order was in effect, we had increases in beer  
11 production. We had changes in varieties. But we were  
12 able to maintain a relatively stable supply. And this  
13 whole marketing order has nothing to do with controlling  
14 the supply itself. It has to do with controlling the  
15 oversupply. And that's what this really, by your own  
16 testimony, I think points to. So I appreciate it.  
17 Thank you.

18 ADMINISTRATIVE LAW JUDGE: I didn't catch  
19 your question on that.

20 MR. GASSELING: I guess it wasn't -- I guess --  
21 well, okay. I can phrase it as a question. Given that,  
22 do you still contend that the last marketing order was a  
23 complete failure?

24 MR. DECELLE: Well, I would answer that by  
25 saying I believe that there are other -- were other

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1 economic forces in play during that period that -- and  
2 even in the subsequent periods that -- independent of  
3 the marketing order that led to the success or the  
4 difficulties that the industry faces.

5 ADMINISTRATIVE LAW JUDGE: Any further  
6 questions, Mr. Gasseling? No? Any other questions from  
7 members of the Proponents Committee? All right.  
8 Questions from others. Mr. Carswell.

9 MR. CARSWELL: Mr. DeCelle, looking at this  
10 chart and the increases in purchases and fluctuations in  
11 purchases after 1986, could those fluctuations, for  
12 example, be based on increased demand for hops around  
13 the world?

14 MR. DECELLE: I'm not well enough versed in  
15 the international market to respond to that.

16 MR. CARSWELL: Could these increases just be  
17 based on the fact that there's demand for these hops and  
18 that's why they were produced?

19 MR. DECELLE: Well, they certainly could be.  
20 I mean the beer market today and even going back 20  
21 years is increasingly an international market, and I  
22 think it's safe to say that there's all kinds of other  
23 activity going on around the world that could lead to  
24 fluctuations in good years and bad years from anybody in  
25 the industry.

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1 MR. CARSWELL: If you look on the chart, in  
2 1990, the price -- the grower price average for 56  
3 million pounds of hops, almost 57 million, was \$1.48.  
4 Then if you look at 1999, 69 million plus pounds were  
5 produced and the price was \$1.68. Then you look at  
6 1992. 74 million pounds were produced and the price was  
7 up to \$1.74. Would those numbers indicate to you a hop  
8 glut where you have rising prices growers are receiving  
9 for an ever-increasing amount of hops? Would that, to  
10 you, indicate a hop glut?

11 MR. DECELLE: No. That would indicate, you  
12 know, that there was still considerable demand at least  
13 in some of that with the rising production period. And  
14 I'm not sure -- what was the period again that you're  
15 citing there, '91 to '94.

16 MR. CARSWELL: I'm sorry. '90 to '92.

17 MR. DECELLE: '90 to '92.

18 MR. CARSWELL: And onto '93, for example.

19 MR. DECELLE: I mean that appears to be a  
20 pretty healthy economic situation there.

21 MR. CARSWELL: So this could be construed as a  
22 fully proper response to market demand. Couldn't it?

23 MR. DECELLE: Certainly.

24 MR. CARSWELL: I wanted to go back to a point  
25 on the quality of hops being affected that you had

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1 answered earlier. And I'd like to take you back to my  
2 scenario that I posed to -- my hypothetical that I posed  
3 to Mr. Carpenter earlier. I believe you were in the  
4 room at the time.

5 MR. DECELLE: Yes.

6 MR. CARSWELL: Were you listening?

7 MR. DECELLE: Yes.

8 MR. CARSWELL: In that situation, I described  
9 grower B as being someone who used to produced 100,000  
10 pounds that had 10 percent alpha so he would have 10,000  
11 pounds of alpha to -- that would be -- that would be  
12 established as his base going into the hop market order  
13 period. And then I gave the hypothetical of there being  
14 a 50 percent cut in the saleable quantity of hops that  
15 would be established by the hop administrative  
16 committee. Thus, that grower B would only be able to  
17 grow 50,000 pounds of hops. Presume he has a  
18 relationship with...

19 ADMINISTRATIVE LAW JUDGE: Just a moment.  
20 Only be able to sell?

21 MR. CARSWELL: I said grow, I believe, and I  
22 should have said sell. He would only be able to sell  
23 50,000 pounds of hops if there was a 50 percent cut in  
24 the saleable quantity.

25 MR. DECELLE: Okay.

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1 MR. CARSWELL: And so presume that he has a  
2 relationship with a brewer where in previous years he's  
3 bought 100,000 pounds of hops -- I'm sorry -- the  
4 brewers bought 100,000 pounds of hops from this grower  
5 and it's been done because the grower has a quality the  
6 brewer requires and they have a good relationship and so  
7 he's been buying -- the brewer has been buying these  
8 hops from this grower at 100,000 pounds. If he is -- if  
9 he's cut to 50,000 and that's all he can grow without  
10 acquiring base...

11 ADMINISTRATIVE LAW JUDGE: Or at least all  
12 that he can sell.

13 MR. CARSWELL: All that he can sell. I'm  
14 sorry. Thank you, Your Honor. I'll be careful. I  
15 apologize. Could you see a disruption in the  
16 relationship between that brewer and that grower because  
17 the brewer would not be able to buy the hops that he's  
18 been able to buy in the past?

19 MR. DECELLE: Certainly. That's the scenario  
20 that I attempted to paint in response to one of the  
21 questions. And actually, I was approaching it under the  
22 thought -- with the thought that the brewer would do  
23 everything possible not to sacrifice the quality. But I  
24 suppose, in the alternative, if -- for whatever reason,  
25 if the successful grower of the 100,000 pounds was not

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1       able to sell that quantity or acquire the base, then the  
2       brewer might, in fact, have to substitute it for a  
3       different crop...

4               MR. CARSWELL:   Well, he certainly...

5               MR. DECELLE:   ...and maintain productions.

6               MR. CARSWELL:   It's true, isn't it, that he  
7       certainly couldn't acquire it, the hops, from this  
8       particular grower?

9               MR. DECELLE:   Correct.  And so whatever  
10       standards, you know -- I know that the brewers would do  
11       everything possible to maintain the quality standards  
12       and I was answering the question under that presumption.  
13       But it certainly could cause a disruption and I think  
14       it's a plausible potential outcome of a marketing order.

15              MR. CARSWELL:   Thank you.

16              ADMINISTRATIVE LAW JUDGE:       Thank you, Mr.  
17       Carswell.  Mr. Jekanowski, I've been referring to you as  
18       mister.  I know you're an economist.  Do you have your  
19       PHD?

20              DR. JEKANOWSKI:       Yes.

21              ADMINISTRATIVE LAW JUDGE:       I'm sorry.  I  
22       should have been calling...

23              DR. JEKANOWSKI:       Yes.  I do.

24              ADMINISTRATIVE LAW JUDGE:       Thank you.  I  
25       should have been calling you Dr. Jekanowski.

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1 DR. JEKANOWSKI: That's fine. I can't  
2 write prescriptions.

3 ADMINISTRATIVE LAW JUDGE: Dr. Jekanowski,  
4 you may cross-examine.

5 DR. JEKANOWSKI: Yeah. I was surprised --  
6 well, kind of surprised. Well, the point was made  
7 before that there's 20 or 25 varieties of hops grown.  
8 Is that correct?

9 MR. DECELLE: That's correct. From one of  
10 the Proponents.

11 DR. JEKANOWSKI: Why are there so many  
12 varieties of hops?

13 MR. DECELLE: Well, the -- there's many  
14 scientific and other variables within the hop --  
15 different varieties of hops. And I would suggest you  
16 ask the question in more detail to the folks who buy  
17 them for the brewers. But they have different purposes  
18 at different points in the brewing process and they are  
19 all combined in varying amounts to produce a particular  
20 taste profile in a beer. And that's especially  
21 important for brewers that brew in more than one  
22 facility. They want to maintain an adequate supply in  
23 all of their facilities that produce a particular brand  
24 for quality control.

25 DR. JEKANOWSKI: So all types of hops

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1       aren't necessarily used in the same way or for the same  
2       types of beer.

3               MR. DECELLE:    No.  I've been at many brewers.  
4       As we said before, they're not even -- they're processed  
5       in different ways.  So they use them in very different  
6       ways.

7               DR. JEKANOWSKI:    But is it your  
8       understanding -- it is mine -- that doesn't the  
9       marketing order consider alpha acid only as -- you know,  
10      what makes a hop a hop is alpha acid.

11              MR. DECELLE:    That's one of the components.  
12      But I would defer to people -- the marketing order  
13      covers the entire industry.  Correct?

14              DR. JEKANOWSKI:    Right.

15              MR. DECELLE:    So it's not...

16              DR. JEKANOWSKI:    That's my understanding.

17              MR. DECELLE:    ...unique to one particular  
18      variety.  That's not what you were saying.  You were  
19      just talking about alpha acid as one of the basic  
20      components of hops.

21              DR. JEKANOWSKI:    Well, I just -- it occurs  
22      to me that the marketing order is only interested -- the  
23      way I understand it, it's only interested in alpha acid.  
24      But what you're telling me right now is that there's in  
25      fact many different quality characteristics or flavor

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1 characteristics of hops that are also important aside  
2 from alpha acid. Is that right?

3 MR. DECELLE: Correct.

4 DR. JEKANOWSKI: The point was made, too,  
5 that there's -- for some varieties, there's only maybe  
6 one grower for particular varieties. Is that correct?  
7 Do you agree with that?

8 MR. DECELLE: That's what I've been told.

9 DR. JEKANOWSKI: Okay. So that implies  
10 that that grower has built up a relationship with that  
11 particular brewer with that particular need for that  
12 specific minor variety of hops. Would that be your  
13 characterization?

14 MR. DECELLE: I don't know whether it would  
15 be a minor variety.

16 DR. JEKANOWSKI: Well...

17 MR. DECELLE: If it was something they used  
18 in a major brand, you know...

19 DR. JEKANOWSKI: Sure.

20 MR. DECELLE: ...it could be several...

21 DR. JEKANOWSKI: But assuming there's  
22 only...

23 MR. DECELLE: ...brewers producing one form  
24 of hops and that might be their only crop. But given...

25 DR. JEKANOWSKI: Okay.

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1 MR. DECELLE: ...the make up of the market,  
2 that wouldn't surprise me.

3 DR. JEKANOWSKI: But so if there's some  
4 varieties that are only grown by one producer, I mean  
5 that implies that that producer is responding to the  
6 needs of that particular brewer or that particular  
7 market segment or you know whatever. Basically that  
8 market -- that hop variety is probably responding to  
9 market needs.

10 MR. DECELLE: Correct.

11 DR. JEKANOWSKI: Correct? So then if the  
12 Hop Marketing Order only considers alpha acid, what  
13 happens to that brewer or to that hop grower who's  
14 subject to a saleable on that variety of hops that's  
15 fulfilling some particular market need?

16 MR. DECELLE: I'm not sure I understand your  
17 focus on the alpha acid.

18 DR. JEKANOWSKI: Well, it's my  
19 understanding that the marketing order treats all hops  
20 the same based on the alpha acid composition. Is that  
21 your understanding?

22 MR. DECELLE: I'm not sure I can answer that.  
23 I think if it treats that hops as one single commodity  
24 are you trying to get at the idea whether it treats  
25 individual varieties or as opposed to the entire hops

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1 production?

2 DR. JEKANOWSKI: Well, that's exactly what  
3 I'm trying to get at that...

4 MR. DECELLE: Okay.

5 DR. JEKANOWSKI: ...essentially the  
6 marketing order is interested in one characteristic of  
7 hops, alpha acid.

8 MR. DECELLE: Okay.

9 DR. JEKANOWSKI: Do you agree with that?

10 MR. DECELLE: Well, no, because if that were  
11 the only characteristic, then the -- why have the other  
12 varieties, if you will?

13 DR. JEKANOWSKI: That's my question. I  
14 agree. I don't understand it either.

15 MR. DECELLE: Okay. All right.

16 DR. JEKANOWSKI: I just wanted to see if  
17 anybody understood.

18 MR. DECELLE: No. I'm sorry. I didn't mean  
19 to be dense.

20 DR. JEKANOWSKI: No. Nothing further.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.  
22 Jekanowski. Any other cross-examination of Mr. DeCelle?  
23 All right. There being none, Mr. DeCelle, is there any  
24 follow-up you'd like to give us now just to clarify  
25 anything that came out on cross-examination?

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1 MR. DECELLE: No, Your Honor.

2 ADMINISTRATIVE LAW JUDGE: All right.

3 Let's deal with the exhibits. Is there any objection to  
4 the admission into evidence of Exhibit 16, which is the  
5 chart regarding per capita beer consumption 1977 through  
6 2001? There being none, Exhibit 16 -- oh, sorry. Mr.  
7 Monahan.

8 MR. MONAHAN: I just -- I have a question. I  
9 don't think I have an objection, but I just want to make  
10 sure what the exhibit is.

11 ADMINISTRATIVE LAW JUDGE: All right.

12 MR. MONAHAN: Do I understand that this  
13 refers to per capita beer consumption by Americans of  
14 beer made in America?

15 MR. DECELLE: No. That is the overall  
16 market. So that's all beer.

17 MR. MONAHAN: All beer...

18 MR. DECELLE: That would include the import  
19 sector as well, which is about 10 percent of the total.

20 MR. MONAHAN: Okay. So all beer consumed by  
21 Americans?

22 MR. DECELLE: Correct.

23 MR. MONAHAN: Thank you. No objection, Your  
24 Honor.

25 ADMINISTRATIVE LAW JUDGE: All right.

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1 Exhibit 16 is hereby admitted into evidence. Exhibit 17  
2 is the U.S. Domestic Brewer Output. The chart shows  
3 years 1980 through 2002. Is there any objection or any  
4 voir dire questions of the witness?

5 MS. DESKINS: I have one, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: Ms. Deskins.

7 MS. DESKINS: What does TTB stand for?

8 MR. DECELLE: TTB is an acronym for the  
9 Alcohol and Tobacco Tax and Trade Bureau, which is a  
10 sub-agency of the Treasury Department responsible for  
11 regulating the industry. The name changed with the  
12 Department of Homeland Security Act. Used to be called  
13 Alcohol, Tobacco and Firearms.

14 MS. DESKINS: Okay. Thank you.

15 ADMINISTRATIVE LAW JUDGE: And thank you  
16 for that question. Any other -- yes. Mr. Monahan.

17 MR. MONAHAN: Yes. Does this Exhibit -- is  
18 it 18, Your Honor? I'm sorry.

19 MR. DECELLE: It is 17.

20 MR. MONAHAN: 17. Does Exhibit 17 include  
21 export sales?

22 MR. DECELLE: I am not positive, but I do not  
23 believe. This is so called tax paid withdraws, which  
24 are the domestic brewers output for sale in the United  
25 States.

1 MR. MONAHAN: Okay.

2 MR. DECELLE: So I do not believe it does  
3 include exports.

4 MR. MONAHAN: But you're not certain?

5 MR. DECELLE: No.

6 MR. MONAHAN: Okay. Thank you, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Any other  
8 questions? Then -- yes, Dr. Hinman.

9 DR. HINMAN: Just one more question.

10 ADMINISTRATIVE LAW JUDGE: Dr. Hinman, I  
11 don't think your mike is on.

12 DR. HINMAN: Mr. DeCelle, could you refer  
13 back to the USDA data table, data compilation on page 7  
14 -- I'm sorry -- page 15, Table 7? In the second to the  
15 last column there, domestic usage of U.S. hops. And  
16 we've already discussed the difficulty of computing this  
17 figure passed 1996. Do you have any data that would  
18 shed light, that would be able to extend that figure,  
19 domestic usage of U.S. hops passed this date in 1996?

20 MR. DECELLE: We don't produce that data, but  
21 I believe that the Treasury Department would have data.  
22 I don't know how they collect it. There could be a lot  
23 of variations. But brewers are required by law to  
24 submit a monthly or quarterly report, depending on their  
25 size, that includes agricultural usage. And that

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1 information is collected and published. But we've had  
2 some problem with their data so I'm not sure -- and  
3 making apples to apples comparisons, I'm sure it's  
4 fairly accurate as to what it purports to be but it's  
5 not always easy because of fiscal years and other things  
6 to make clean comparisons. Maybe you've run into that  
7 problem.

8 DR. HINMAN: Thank you.

9 ADMINISTRATIVE LAW JUDGE: You're welcome,  
10 Dr. Hinman. Is there any objection to the admission  
11 into evidence of Exhibit 17? There being none, Exhibit  
12 17 is hereby admitted into evidence. Now I have need  
13 giving a number to the written statement that Mr.  
14 DeCelle has brought. I believe I said it would be 18.  
15 All right. So when you give that to me I will mark that  
16 as Exhibit 18. And Mr. DeCelle, do you have any  
17 questions of those people who have asked you to supply  
18 information with regard to what it is they want?

19 MR. DECELLE: No. I think I have accurate  
20 notes of what's been asked for or requested. I would --  
21 the other potential exhibit, which I believe I can  
22 obtain for you, would be the Tax and Trade Bureau or  
23 Alcohol, Tobacco and Firearms recommendation on how much  
24 hops to use -- the ratio of hops in a given volume of  
25 beer. I may be able to provide that before I leave.

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1 ADMINISTRATIVE LAW JUDGE: Good. Thank  
2 you. All right. Feel free at any time that you have  
3 more information for us just to step in the door and  
4 we'll...

5 MR. DECELLE: Certainly.

6 ADMINISTRATIVE LAW JUDGE: ...stop what  
7 we're doing to take that.

8 MR. DECELLE: I'll try to do that quickly.  
9 Thank you.

10 ADMINISTRATIVE LAW JUDGE: All right. Very  
11 good.

12 MR. DECELLE: Thank you.

13 ADMINISTRATIVE LAW JUDGE: All right. You  
14 may step down, Mr. DeCelle. Thank you. Mr. Monahan,  
15 are you prepared now to go forward with your next  
16 witness or would you like a brief break? Court reporter  
17 would. Let's take 15 minutes. Please be back ready to  
18 go at 3:20.

19 \*\*\*

20 [Off the record.]

21 [On the record.]

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE: We're back on  
24 record at 3:24 p.m. The court reporter needs  
25 clarification of some spellings, particularly of names

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1 that were used. Mr. Moody, several of them are people  
2 that you identified when you were asking questions about  
3 seven different companies that may have marketed hops.

4 MR. MOODY: Your Honor, if it's okay we'll  
5 do it off record at the next break so as not to waste  
6 your time.

7 ADMINISTRATIVE LAW JUDGE: Yes. That's  
8 what I'd like for you to do. I think you will probably  
9 be able to provide most of the spellings the court  
10 reporter has and if there are any left over we'll deal  
11 with those at a later time. All right. Mr. Monahan,  
12 what would you like to do next?

13 MR. MONAHAN: Your Honor, I note with just a  
14 hint of dismay that we are now through the first of our  
15 15 witnesses. Before we proceed on to witness #2, I  
16 would just like to bring up one housekeeping matter.  
17 And that is we learned from Mr. DeCelle today that there  
18 are members of the Beer Institute who intend to testify  
19 at these hearings. We learned from Mr. Moody that there  
20 are indeed growers in opposition to the Hop Marketing  
21 Order who intend to testify. The Proponents Committee  
22 did provide the courtesy of making a list of the persons  
23 who will testify in support and the order in which  
24 they'll appear. I did note during the cross-examination  
25 of Mr. DeCelle that there were a number of -- I'll

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1 euphemistically phrase it as scattered cross-examination  
2 questions from the Proponents Committee. And I think if  
3 we have a list or some idea of who was going to be  
4 testifying in opposition to the proposal either on  
5 behalf of Mr. DeCelle's members or from the Opposition I  
6 think it would help the Proponents streamline  
7 questioning and would help us speed through this  
8 process, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: All right. I  
10 think it's sometimes difficult for people testifying  
11 against a proposition to identify who all will be  
12 involved. So without considering it a limitation in any  
13 way on the witnesses that will be called, to the extent  
14 you know witnesses, I do with you would share that  
15 information with one another. And Mr. DeCelle, you're  
16 in the room now. Is that correct?

17 MR. DECELLE: Yes, Your Honor.

18 ADMINISTRATIVE LAW JUDGE: All right. Do  
19 you know of particular members of your organization who  
20 will be testifying that you could identify for us?

21 MR. DECELLE: Is it okay to respond from  
22 here?

23 ADMINISTRATIVE LAW JUDGE: It is but that  
24 may not be on.

25 MR. DECELLE: Okay. I'm sorry. I am aware

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1 of a couple of company representatives that are  
2 interested in testifying. I can't tell you exactly  
3 when, however. I know there's one gentleman from Coors  
4 Brewing Company. And I don't know, Mr. Moody -- or Mr.  
5 Carswell can speak for Anheiser-Busch.

6 ADMINISTRATIVE LAW JUDGE: All right. Do  
7 you know the name of the gentleman from Coors?

8 MR. DECELLE: No. I do not, Your Honor.

9 MR. DECELLE: All right. All right. So do  
10 you have any other specifics that you could supply at  
11 this time with regard to your members?

12 MR. DECELLE: No. I do not. I do have the  
13 exhibits...

14 ADMINISTRATIVE LAW JUDGE: Excellent.

15 MR. DECELLE: ...that were available. I have  
16 my written statement plus the Tax and Trade Bureau  
17 guidance on proportions of hops and other products to be  
18 used in beer and other malt beverages.

19 ADMINISTRATIVE LAW JUDGE: All right. And  
20 do you have only one copy of each?

21 MR. DECELLE: No. I just got copies made so  
22 I have four of each.

23 ADMINISTRATIVE LAW JUDGE: Excellent. All  
24 right. If you would approach me with those at this  
25 time. I'm marking your statement as Exhibit 18. Would

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1       you please hand this one to the court reporter as the  
2       record copy? With regard to the other three, would you  
3       give one to Mr. Monahan, one to Ms. Deskins and one to  
4       Mr. Moody? Those of you that have those copies I'd ask  
5       that you'd share them with the people that are sitting  
6       in your vicinity. And what is your other document?

7               MR. DECELLE:     The other document...

8               ADMINISTRATIVE LAW JUDGE:     I'm sorry. I  
9       turned that off.

10              MR. DECELLE:     All right. The other document  
11       is entitled "Minimum Requirements for Malt Beverage  
12       (Beer) Products." It's the informal guidance that the  
13       Tax and Trade Bureau, formerly the ATF and prior to that  
14       Alcohol and Tax -- Alcohol and Tobacco Tax Division has  
15       used since 1970 to classify a malt beverage and it  
16       includes a proportion of hops that should be used per  
17       100 barrels of beer. And I believe it's responsive to  
18       one of the questions from the Department of Agriculture  
19       staff.

20              ADMINISTRATIVE LAW JUDGE:     All right. I'd  
21       like to mark that as Exhibit 19. And from what document  
22       does this come?

23              MR. DECELLE:     There's a citation on it,  
24       publication that the Alcohol and Tobacco -- or ATF used  
25       to do periodically called Compliance Matters, which was

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1 various little pieces of federal guidance with specific  
2 application at different parts of the alcohol beverage  
3 industry, kind of a very technical newsletter type  
4 document, if you will.

5 ADMINISTRATIVE LAW JUDGE: All right.  
6 Thank you. Would you give the one that I have marked to  
7 the court reporter as the official copy and distribute  
8 the other three to Ms. Deskins, Mr. Monahan and Mr.  
9 Moody? Mr. DeCelle, thank you very much. Is there  
10 anything further before you depart?

11 MR. DECELLE: No, Your Honor. Thank you very  
12 much.

13 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.  
14 Moody, with regard to the question that was asked by Mr.  
15 Monahan, are you able to provide any identification of  
16 witnesses you intend on calling?

17 MR. MOODY: Yes, Your Honor. We'll have a  
18 typed list in the morning for as many of the con growers  
19 that we know are coming as we can assemble.

20 ADMINISTRATIVE LAW JUDGE: Thank you.

21 MR. MOODY: Thank you.

22 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
23 Monahan, you may proceed.

24 MR. CARSWELL: Excuse me, Your Honor.

25 ADMINISTRATIVE LAW JUDGE: Yes.

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1 MR. CARSWELL: I just wanted to add that we  
2 have Don Kloth.

3 ADMINISTRATIVE LAW JUDGE: Oh, I'm sorry,  
4 Mr. Carswell.

5 MR. CARSWELL: That's okay.

6 ADMINISTRATIVE LAW JUDGE: Thank you.  
7 Don...

8 MR. CARSWELL: Kloth. It's K-l-o-t-h, but the  
9 h is silent. And he's the head of corporate purchasing  
10 at Anheiser-Busch and he plans to be here Friday to  
11 testify. And I also happen to know that a couple of  
12 other brewer representatives are planning to come. One  
13 is Kurt Widmer from Widmer Brewing, planning to be here  
14 on Friday.

15 ADMINISTRATIVE LAW JUDGE: And how is his  
16 name spelled if you know?

17 MR. CARSWELL: W-i-d-m-e-r.

18 ADMINISTRATIVE LAW JUDGE: All right.

19 MR. CARSWELL: His name is K-u-r-t I believe.  
20 And then next week in Yakima we plan -- Mr. Paul Shipman  
21 plans to be there. And he is the CEO, I believe, of  
22 Redhook. And Paul Shipman is S-h-i-p-m-a-n.

23 ADMINISTRATIVE LAW JUDGE: And that is  
24 Redhook.

25 MR. CARSWELL: Yes, ma'am. One word. Redhook

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1       Brewing Company.

2               ADMINISTRATIVE LAW JUDGE:       Thank you. Are  
3       there any other witnesses that are known at this time  
4       who would be testifying against the proposals?

5               DR. JEKANOWSKI:        I will be testifying  
6       against the proposal, Your Honor.

7               ADMINISTRATIVE LAW JUDGE:       All right.  
8       Thank you, Dr. Jekanowski. All right. That's a start  
9       at any rate. Mr. Monahan.

10              MR. MONAHAN:    Thank you, Your Honor.

11              ADMINISTRATIVE LAW JUDGE:       You're welcome.  
12       You may proceed.

13              MR. MONAHAN:    Your Honor, the Proponents  
14       Committee would call Mr. Michael Smith. And Your Honor,  
15       Mr. Smith is going to be presenting a Power Point  
16       presentation, which requires him to fiddle with the  
17       computer that is seated on the table. And we would ask  
18       the Court's permission to allow him to testify from his  
19       seat.

20              ADMINISTRATIVE LAW JUDGE:       He may.

21              MR. MONAHAN:    And the first question I'd ask  
22       Mr. Smith is what are those things we're looking at up  
23       there?

24              ADMINISTRATIVE LAW JUDGE:       Now, does he  
25       have a microphone? I'd like you to keep one, Mr.

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1 Monahan. Do you think -- are there two that would  
2 reach?

3 MR. MONAHAN: I'll sit at the other table,  
4 Your Honor.

5 ADMINISTRATIVE LAW JUDGE: That would be  
6 great. Thank you.

7 MR. SMITH: We think so too.

8 MS. DESKINS: Judge Clifton, he needs to be  
9 sworn in before he starts.

10 ADMINISTRATIVE LAW JUDGE: Thank you. I  
11 appreciate that. Whenever my routine is disrupted I  
12 forget these little details. Mr. Smith would you state  
13 your full name and spell it for us?

14 MR. SMITH: Michael M. Smith. Do you still  
15 want me to spell it?

16 ADMINISTRATIVE LAW JUDGE: No. The middle  
17 initial is M as in Michael also.

18 MR. SMITH: No. Marion

19 ADMINISTRATIVE LAW JUDGE: Marion. Okay.  
20 Now I need you to spell Marion.

21 MR. SMITH: M-a-r-i-o-n.

22 ADMINISTRATIVE LAW JUDGE: All right.  
23 Thank you.

24 \*\*\*

25 [Witness sworn]

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ADMINISTRATIVE LAW JUDGE: Mr. Monahan, you may ask your question again please.

MR. MONAHAN: I'm afraid I was being facetious, Your Honor. I asked him to identify the things we're looking up at the screen.

ADMINISTRATIVE LAW JUDGE: Oh, all right. You may go forward, Mr. Smith.

MR. SMITH: Well, one of the, if not the most important question that's before this group of growers and Department today is should U.S. growers adopt a federal marketing order for hops. For my portion of the testimony and the evidence, I guess, that I'm going to deliver today will be primarily -- in fact, completely -- revolve around these varieties starting here with Chelan/Tillicum, Warrior, Millennium, CTZ, Chinook, Galena and Nugget. Those varieties comprise 75 percent of the total production from the United States in crop year 2002. And the reason that I'm going to do that is that these varieties here are domestically-grown varieties that are used primarily in domestic markets, whereas these varieties -- in fact the majority of those varieties are exported to world brewers. So for...

MS. DESKINS: Judge Clifton, I hate to interrupt, but in terms of the record, when you point

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1 things out it's not going to appear on the record what  
2 you're speaking about. So when you say these  
3 varieties...

4 MR. SMITH: Okay.

5 MS. DESKINS: ...that's not going to appear  
6 on the record so keep that in mind that whatever you say  
7 identify it because on the record it's just going -- it  
8 won't be clear what you're talking about.

9 MR. SMITH: I understand. I'm not sure  
10 I'll be able to do it, but I understand.

11 ADMINISTRATIVE LAW JUDGE: Mr. Smith, if  
12 right now, would you show me beginning with the  
13 Willamette over on the right hand side, which of the  
14 varieties are used primarily for domestic use.

15 MR. SMITH: Willamette, Mt. Hood, Perle  
16 Cascade, and then other aroma. This actually comprises  
17 about 20 different varieties, Your Honor, in the other  
18 aroma category.

19 ADMINISTRATIVE LAW JUDGE: All right. And  
20 again, if you would name for me, beginning with the  
21 Chelan/Tillicum.

22 MR. SMITH: Yes. Chelan/Tillicum. That's  
23 actually two different varieties but they're very  
24 similar in nature. Those varieties are in excess of 10  
25 percent alpha acid. Warrior/Millennium are actually two

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1 separate varieties of similar nature, released about a  
2 similar time, in excess of 10 percent alpha. CTZ is  
3 actually a composition of three different names but  
4 essentially the same variety. And the CTZ stands for  
5 Columbus, Tomahawk and Zeus. Chinook, Galena and  
6 Nugget, and all of these varieties have between 12 and  
7 20 percent alpha acids on an annual basis.

8 ADMINISTRATIVE LAW JUDGE: Now, were the  
9 varieties beginning at the time with the Chelan/Tillicum  
10 and going clear around to Nugget all used primarily for  
11 export?

12 MR. SMITH: The bulk of those are used for  
13 export. That's true.

14 ADMINISTRATIVE LAW JUDGE: All right.  
15 Thank you.

16 MR. SMITH: I also want to preface my  
17 comments so that USDA understands and certainly I'm sure  
18 the audience understands that I don't consider myself to  
19 be an expert in statistics. I don't consider myself to  
20 be expert in brewing. But I do consider myself to be a  
21 student of the hop market and for the last 22, 23 years  
22 I've taken a personal interest in the hop market in  
23 statistics and tracking prices and so forth. And that's  
24 what I offer today. Reasons for a Hop Marketing Order,  
25 I think there are three primary reasons. It could be

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1 argued that there's quite a few more. One, that the  
2 U.S. production of those varieties mentioned earlier  
3 does have an impact on world prices, that the demand for  
4 hops is inelastic in nature, and that the hop market has  
5 developed into a situation where we really have lack of  
6 what I would term a competitive market. And I'll  
7 address each one of those separately. First, looking at  
8 the impact that U.S. hops have on world prices for alpha  
9 acid, a little bit of historical perspective I think is  
10 in order. We can -- this is -- and most of these graphs  
11 will depict about a 10-year period in time, but in 1994  
12 in the United States you can see that the alpha acid  
13 production from that class of varieties was concentrated  
14 into three varieties. The access on the left-hand side  
15 of the chart is listed in kilograms of alpha that were  
16 produced at the farm level. And those three varieties  
17 were Nugget, Galena and Chinook. Beginning in about  
18 1996, this class of varieties, CTZ, was released into  
19 the market. And you can see that since 1996 until 2001  
20 there was a significant increase in production in that  
21 class of varieties. That class of varieties produces  
22 significantly more alpha and we'll see that later in the  
23 presentation and those other varieties. And thus,  
24 there's some economic benefits certainly to brewers for  
25 growers to grow those varieties. And then there's been

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1 a couple of new varieties that have kind of appeared in  
2 the last few years. Millennium and Warrior are both  
3 propriety varieties that were released from private  
4 breeding programs. If we looked at that on a percentage  
5 basis of alpha acids produced for this crop -- okay, and  
6 these are estimates based on information that I have  
7 obtained from growers and from our own farm and so forth  
8 and they'll be finalized or have final figures in  
9 January -- you can see 43 percent of that alpha acid is  
10 produced by the group of varieties, CTZ. Millennium  
11 should produce about 12 percent of the alpha. Warrior  
12 about nine percent. Chelan and Tillicum two percent.  
13 Nugget 14 percent. Galena 17 percent. And Chinook  
14 three percent. This is a graph because as we move into  
15 the statistical or the charts that I'm going to show  
16 today we'll also be comparing U.S. production of alpha  
17 acids with alpha acids produced with the other primary  
18 growing region that we compete with primarily and that's  
19 in Germany. We can see the beginning of this time cycle  
20 in 1993 that the three varieties that were most heavily  
21 planted in the world, in fact, were use varieties on an  
22 acreage basis. We had Chinook, Nugget and Galena. The  
23 fourth most popular variety or most planted variety -- I  
24 should use that term, I guess -- was German Magnum.  
25 Okay. And German Magnum is a high-alpha variety as

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1 well, alpha acids typically in the 13 to 15 percent  
2 area. And what we notice as we look at the graph is the  
3 primary varieties, the three most popular varieties 11  
4 years ago certainly are not the most popular varieties  
5 today. We see that Magnum has had a terrific increase  
6 in productive area over the last 11 years.

7 MR. MOODY: Excuse me, Mr. Smith. Your  
8 Honor, if I may ask a question.

9 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Moody.

10 MR. MOODY: Thanks. Brendan this morning  
11 mentioned that the slides would be used just to put text  
12 of the marketing order sections up on the screen, which  
13 we all have printed copies of, which is fine. And this  
14 is a pretty fascinating presentation, but you know, I --  
15 well, I can't see anything from here. But it would help  
16 us to prepare and understand for the presentation to  
17 have copies of these slides and graphs. I know it would  
18 help the record. This is not helpful to the record  
19 because it's on the screen but it's not going on the  
20 record as it is. So if we could get copies of these  
21 slides...

22 MR. MONAHAN: That was what we...

23 MR. MOODY: ...and just go through them.

24 MR. MONAHAN: Sorry, Jim. That's what we  
25 reserved for Exhibit 8.

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1 MR. MOODY: This is Exhibit 8 you're doing?

2 MR. MONAHAN: Exhibit 8 will be the sum total  
3 of the slide presentation by Mr. Smith.

4 MR. MOODY: That's these here?

5 MR. MONAHAN: Yes.

6 MR. MOODY: Okay.

7 MR. CARSWELL: For purposes of cross-  
8 examination, can we -- you know I'd like to have a set  
9 of these so I can refer back to them. Can we get a copy  
10 now?

11 MR. SMITH: I'm not sure how we would do  
12 that.

13 MR. MONAHAN: Got a printer?

14 MR. SMITH: But we could easily -- if you  
15 wanted to make notations, we could easily back up to  
16 these slides and put them up for you to ask questions.

17 ADMINISTRATIVE LAW JUDGE: My biggest  
18 concern is that Mr. Moody be able to see what I'm  
19 seeing, which is not possible without his having  
20 something close to his eye. I'm wondering would it be  
21 possible for us to change the order of the Proponents  
22 Committees presentations so that the reproduction of  
23 these slides would be available during your testimony,  
24 Mr. Smith. Let me ask Mr. Monahan that question.

25 MR. MONAHAN: Certainly we're flexible as to  
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1       that, Your Honor. The historical and statistical  
2       information presented by Mr. Smith does really provide  
3       the foundation for the order itself and I think when we  
4       get into the nuts and bolts of verbiage, it's going to  
5       make a lot more sense with the background of Mr. Smith's  
6       presentation. So I guess it can be done but it really  
7       will be taking it out of order.

8               MS. DESKINS: Judge Clifton, I have a  
9       suggestion. Is it possible, if it's okay with the  
10      Proponents, if Mr. Moody sat next to Mr. Smith and he  
11      could look at the screen on the computer?

12             MR. MONAHAN: Do you have any problem with  
13      that, Jim?

14             MR. MOODY: Well, that doesn't work. I  
15      can't have it here.

16             MR. MONAHAN: Okay.

17             MR. MOODY: You guys have not one single  
18      printed copy we could just run and Xerox real quick?

19             MR. SMITH: I didn't listen closely enough  
20      to Mr. -- well, to Brendan, because when he told me to  
21      print it out, I thought I could do that afterwards, that  
22      we could introduce that testimony afterwards and so I  
23      don't have a printed copy.

24             MR. MONAHAN: Your Honor, do you mind if we  
25      just take a five-minute break. I'll see if perhaps

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1       there is set up at the hotel that we can print this  
2       right now.

3 MR. SMITH: We could probably go in the  
4 business office and print off at least one copy right  
5 away.

6 ADMINISTRATIVE LAW JUDGE: That would be  
7 great.

8 MR. MONAHAN: We'll make the effort, Your  
9 Honor.

10 ADMINISTRATIVE LAW JUDGE: All right.

11 Good.

12 MR. MOODY: Thank you very much.

13 ADMINISTRATIVE LAW JUDGE: Let's -- I know  
14 it's going to take more than five minutes. So let's --  
15 everybody, you've got 15 minutes to mill around.

16 \*\*\*

17 [Off the record.]

18 [On the record.]

19 ★ ★ ★

20 ADMINISTRATIVE LAW JUDGE: We're back on  
21 record at 4:17. Thank you so much for making that copy.  
22 I realize it delayed things just a bit but I appreciate  
23 it very much. I am charging that time against  
24 Proponents though. Mr. Monahan, are you prepared to  
25 resume?

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1 MR. MONAHAN: Yes, we are, Your Honor. Thank  
2 you.

3 ADMINISTRATIVE LAW JUDGE: All right.  
4 You're welcome. Mr. Smith, you may proceed.

5 MR. SMITH: Okay, Your Honor. Thank you.  
6 I'm trying to remember where I was. I was talking about  
7 the acreage change or the acreage distribution, so to  
8 speak, over the last 11 years. And I was -- I think I  
9 was commenting on the tremendous increase in acreage of  
10 the German hop variety Magnum. And at this point, the  
11 Magnum, in 2003, was by far the -- had the largest  
12 planting in the world in this class of varieties. We  
13 can see that CTZ group of varieties was also increasing  
14 at a rapid rate until the year 2001 when it increased to  
15 over 3000 areas. But over the last couple of years with  
16 market conditions, the set aside program that was  
17 referred to be Mr. Carpenter was in 2002, some CTZ were  
18 laid idle at that point. And then market conditions for  
19 2003 dictated that there was a further drop in acreage.  
20 Looking at another class of varieties, because it gives  
21 an indication of a significant change for the German hop  
22 industry, but there's to other bittering varieties that  
23 were primarily used before the advent or invention of  
24 high-alpha varieties. Those didn't actually hit the  
25 scene -- the hop industry until the early '90's --

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1       excuse me -- early '80's. But the Germans didn't have  
2       access to any high alpha varieties. As you recall, from  
3       an earlier graph, the Magnum was planted on a very low  
4       scale in 1993 and was just getting going. But Northern  
5       Brewer and Cluster, which are varieties that typically  
6       would have between seven to eight percent for the  
7       cluster and for Northern Brewer maybe as high as nine to  
8       10 percent but generally more around eight, were  
9       providing a significant amount of bittering in the  
10      overall world market, but since the peak in 1996 have  
11      fallen to less than 100,000 kilos of alpha for this  
12      year. This graph is a graph of U.S. high-alpha hop  
13      production in kilograms of alpha at the farm level. And  
14      it's a compilation of all the varieties in those  
15      classes. And so we can see in '93 and '94 something  
16      over 2 million kilos of alpha up to about 2.5 million  
17      kilos of alpha. And then in 1998 was the first year  
18      that the United States had been affected by powdery  
19      mildew, which is a devastating disease and in particular  
20      devastated one variety, virtually wiping it out. And  
21      you can see that we had a very low production relatively  
22      speaking in 1998. We peaked our alpha production in the  
23      year 2001 and the alpha production has declined  
24      significantly over the last two years, this decline  
25      being primarily due to reduction in acreage, not

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1 reduction in yields. Looking at the German high-alpha  
2 acreage or high-alpha production -- excuse me -- these  
3 are varieties that are also in that 10 percent alpha  
4 category or greater. And you can see that in 1993 the  
5 Germans produced very little of these. The variety,  
6 German Magnum, was just -- had just been released in a  
7 couple of years earlier than this and was gaining  
8 popularity but fairly slowly at first and then fairly  
9 rapidly. You'll notice the 2003 estimate is  
10 significantly lower than the 2002 production. This is  
11 due to -- and maybe it's been referred to earlier in  
12 testimony or in the discussions -- but the German crop  
13 basically was a failure this year, as you can see.  
14 Terrifically high temperatures, no moisture and resulted  
15 in low production and very low alpha acid levels for  
16 this year. And so from the level of last year's  
17 production of something over 1.6 million kilos of alpha  
18 at the farm level, this year, that production is  
19 probably going to end up in the 800,000 to 900,000 kilo  
20 alpha. When we put those -- and again, those varieties  
21 compete directly in the market place -- all of those  
22 varieties, both of the U.S. and the German alpha  
23 varieties, compete directly with each other in  
24 international markets primarily. So what I've done here  
25 is I've put the German alpha -- combined the German

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1     alpha production from those varieties in the same class  
2     with the U.S. alpha production to get a total alpha  
3     production for the two major growing regions. And then  
4     it even gets a little more interesting because then we  
5     can begin to add bitter hop alpha, which would be alpha  
6     from varieties that were producing somewhere between  
7     seven and 10 percent alpha but were not really  
8     considered to be aroma varieties; were really considered  
9     to be bitter hop varieties. And those were primarily --  
10    we looked at them earlier -- Northern Brewer from  
11    Germany, Cluster from the U.S. and then the bulk of the  
12    Chinese production is also in that bitter hop category.  
13    But again, just to give an idea of what the overall  
14    bitter hop alpha production has been over this period of  
15    ten years. Before I go to this graph I want to go back.  
16    One of the -- the premise or the argument that I was  
17    putting forth here is that, in fact, the U.S. alpha  
18    production from this class of varieties does, in fact,  
19    have an impact on world prices. And what you can see as  
20    you go back and -- let's try that again -- as you go  
21    back and we look at this graph, which includes all the  
22    bitter hop varieties, the Chinese production and we look  
23    at -- then we go back on graph and we look at the German  
24    and U.S. together and then we look at the U.S. by  
25    itself. What we see is that those graphs look typically

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1 the same, that they're very similar. And so it gives us  
2 an indication that the U.S. production of alpha has a  
3 significant impact, obviously, on the overall alpha  
4 production in the world and subsequently -- and I'll  
5 show in the next graph -- has an impact on the pricing  
6 of world alpha. So let's run back down. Here we go.  
7 This is a graph that I put together and it didn't  
8 reproduce very well under Power Point, but it's a graph  
9 that I put together to try to give me an indication of  
10 what the demand for U.S. high alpha was. And absent  
11 having any good data to go to as far as brewer usage  
12 worldwide, what we do have good figures on is the actual  
13 amount of alpha that was produced at the farms. We know  
14 that. The other thing that we know or at least that we  
15 can get some indications is what pricing does. And so  
16 what I was looking for when putting this graph together  
17 was the price action as it related to production. And  
18 in doing so -- and this is a very rudimentary analysis -  
19 - but it gave me some feel for what the market for U.S.  
20 alpha was. And so you can see in the bars, we have the  
21 total amount of alpha that was produced at the farm in  
22 that class of varieties. We have a price indication on  
23 the yellow chart here. And what I've done to acquire  
24 that data is looked at prices -- FOB prices to brewers  
25 four to six months after the crop. The reason I chose

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1 that is because right after the harvest a lot of times  
2 there will be some price fluctuations in the market  
3 place that may not have a lot to do with delivery of  
4 alpha to brewers but rather some balancing of positions  
5 by dealers or so forth. But four to six months after  
6 the harvest, the markets generally settle down. Those  
7 people that have alpha in the inventory or for sale want  
8 to sell it. Those people who need alpha are in the  
9 market to buy it. And so I thought that was a better  
10 indication of how the price reacted to the previous  
11 years crop. And what we can see is that we started out  
12 with about a \$48 per kilogram alpha average  
13 approximately six months following the 1994 harvest.  
14 Okay. The 1994 harvest in Germany was a fairly poor  
15 harvest in general. It was hot weather. They had low  
16 alpha. So there was some opportunities that existed for  
17 U.S. hops at that point as well as the fact, if you  
18 remember from a previous graph, that in 1994 the Germans  
19 really didn't produce a significant quantity of alpha in  
20 this class of varieties. It was less than 300,000 kilos  
21 of alpha. So the American farmer had a tremendous  
22 advantage over the Germans at this particular time in  
23 the market place. And this \$48 figure was a good price  
24 for U.S. growers but a price that the German farmers  
25 really couldn't compete with. And we, in fact, in 1994,

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1 American farmers were delivering American alpha to  
2 German brewers to be used in their own country, which  
3 was kind of an interesting scenario; one that we haven't  
4 seen in the last few years. So we can see in 1995, the  
5 U.S. produced about 2.8 million kilos of alpha and we  
6 saw a slight reduction in average price from \$48 to \$43.  
7 In 1996, the U.S. produced 2.9 million kilos of alpha,  
8 almost 3 million kilos of alpha from this class of  
9 varieties. We saw a further erosion in price. In 1997,  
10 even though the overall production in alpha had dropped  
11 to just under 2.8 million kilos of alpha we saw an  
12 erosion in price further, which indicates that even when  
13 we have a large crop from the year prior if that entire  
14 crop is not moved into the market it still begins to  
15 have a depressing effect on world prices. In 1998, we  
16 talked about it earlier, powdery mildew hit. The U.S.  
17 had a very poor production of alpha acids. And  
18 correspondingly, a few months later we saw an increase  
19 in prices. 1999 went to 2.8 million kilos of alpha but  
20 the deficit that was created from 1998 was still  
21 apparent in the market place and we saw an improvement  
22 in pricing back to the 40 -- approximately the \$42  
23 level. In 2000 was really the beginning -- we've heard  
24 it talked to before -- chronic oversupply or whatever,  
25 but certainly it was the beginning of the oversupply

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1 situation that we've been suffering under the last few  
2 years. The U.S. produced 3.2 million kilos of alpha  
3 that year, far exceeding anything that we had produced  
4 in prior years. And after being in a somewhat balanced  
5 situation, we saw an erosion in prices a few months  
6 after the harvest. 2001, again if you remember the  
7 graph of the varieties, the CTZ group of varieties was  
8 being planted on a wider and wider scale through this  
9 period of time. And that was the bulk of the increase  
10 in production was coming out of those varieties. In  
11 2001, we produced -- actually we produced over 3.5  
12 million kilos of alpha. Fortunately, I guess for the  
13 industry, unfortunately maybe for some individuals,  
14 there was a couple of warehouse fires that destroyed  
15 it's been estimated about 90,000 kilos of alpha. So  
16 that alpha never actually was forced on the market  
17 place. But six months following the harvest, we saw a  
18 further erosion in price. And then last year, even  
19 though in 2002 we had the set aside program, the  
20 voluntary program and the U.S. produced a significantly  
21 lower quantity of alpha than they had the prior year by  
22 the tune of about 500,000 kilos of alpha of what was  
23 actually got -- what was marketable. We saw a  
24 tremendous drop of prices down into the \$22 and even  
25 probably lower in some cases prices. This year, my

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1 figures are indicating an anticipated crop of 2.5  
2 million kilos of alpha and prices have already moved  
3 into the \$40 plus area. What it will be three to five  
4 months from now is really anybody's guess. You can make  
5 a case that it may be somewhat higher than that and  
6 maybe it will be lower. I don't know. But the fact is  
7 we've already seen a significant improvement in price  
8 with this tremendous reduction, both in the U.S. But if  
9 you recall the German graph had a tremendous hole in  
10 total alpha production as well. So I think that's  
11 actually what the next slide is. The next slide  
12 actually is world high alpha production. And I don't  
13 recall if this is just the German and U.S. together or  
14 if it is in fact all the high alpha production. But if  
15 it's German and U.S., which is what I think it is,  
16 that's the bulk of it any way, 90 percent. But you can  
17 -- you see typically the same thing. And so what I've  
18 tried to do with this is following price action. Try to  
19 get a feel for what the overall quantity of alpha that's  
20 marketable between Germany and the U.S. at the  
21 profitable level. And you can see that together with  
22 Germany in 2001, we produced 4.9 million kilos of alpha  
23 from this class of varieties at the farm level. And  
24 this year I'm projecting that will be about 3.3 million  
25 kilos of alpha. I've also tried to track market share

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1 of this class of varieties that competes directly  
2 against each other. And basically what I've done is  
3 just take the alpha production of the various countries,  
4 again of varieties over 10 percent and looked at it.  
5 And it's really pretty amazing to me. In 1994, the  
6 American farmers enjoyed a 75 percent of the total  
7 production of these varieties. The Germans, the English  
8 and the Australian/New Zealand growers each had just  
9 under 10 percent. The German production increased  
10 rapidly with Magnum. And we see the decline of the  
11 Australia/New Zealand production as a percentage of the  
12 total as well as the U.K. We can see this year that  
13 even though the Americans produced a smaller crop, the  
14 devastating crop in Germany actually puts us in a little  
15 bit stronger market share position than what we had  
16 certainly last year. What's interesting about this  
17 graph when I really started thinking about it, however,  
18 was this is market share as it would relate to total  
19 production by the farms. But in fact, the U.S. farmers,  
20 the American farmers didn't sell all of their 2000 crop  
21 into the market place. They didn't sell all their 2001  
22 crop and they didn't sell all their 2002 crop. So in  
23 fact, while we have this share of the overall  
24 production, to say we have that share of that overall  
25 market wouldn't be true because we haven't actually sold

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1       it it would be hard to make a case that we had part of  
2       that market. So that next slide, I did a theoretical  
3       market share I think -- there we go -- theoretical  
4       market share that if the Americans had sold all of their  
5       alpha, okay, and what I've done is taken off the amount  
6       of alpha that the industry tends to think was in  
7       inventory, which was approximately a million kilos of  
8       alpha. And that comes from various sources and there's  
9       no way of really pinning it down, but that's the general  
10      feeling. But if I took off the 100,000 of extra in 2001  
11      that wasn't sold and the 600,000 here and so forth and  
12      then if the Germans would have produced a normal crop  
13      from their acreage, we can see that in fact the American  
14      percentage of the world market for this class of  
15      varieties would have continued to fall and the Germans  
16      would have continued to gain ground. Any way, that's  
17      those slides. Moving on, the point of that section of  
18      my presentation was to point out that one, yes, we are  
19      in a competitive environment with the Germans. We have  
20      lost market share over the last 10 years. We enjoyed a  
21      super share of the market, I guess would be one way of  
22      phrasing it, in the early '90's through to the mid-  
23      '90's. But in fact, the level of production of U.S.  
24      alpha has a significant impact on world prices. It  
25      would appear that way from the data that I've submitted.

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1 Moving on to the second reason for a Hop Marketing Order  
2 would be the extremely inelastic demand for hops in  
3 general. And I feel a little -- it's a little difficult  
4 for me to put up a graph like this with two doctors,  
5 PhD's, in economics here and begin to try to explain  
6 this. But anybody in the audience or that has taken any  
7 economics classes even at a low level remembers seeing a  
8 similar graph that depicts demand and supply and the  
9 impact of increasing or decreasing supply on price.  
10 There's a quote here from Robert Shank, a professor of  
11 economics at St. Joseph's College in Indiana and the  
12 quote reads, "If American farmers all have excellent  
13 harvests, they may have a very poor year financially.  
14 They would have been better off if they all have  
15 mediocre harvests." And essentially what he's saying  
16 along with the graph of inelastic demand is that as  
17 price -- or as supply increases, price many times will  
18 decrease at a greater rate than the increase in supply.  
19 And I think it's interesting in hops because my personal  
20 opinion -- and I don't go through, you know -- there's a  
21 way of calculating -- I think Dr. Folwell will do it  
22 next week -- you know the demand -- the elasticity  
23 coefficient of demand for hops and so forth and our  
24 esteemed professors here would have a better -- would be  
25 able to explain that better than I would. But just

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1 looking at it from a practical sense and from a dumb  
2 farmer's sense, to me it becomes pretty simple to find  
3 out for, in the case of hops, if the demand for hops is  
4 in fact inelastic by just asking an simple question.  
5 And the question that I think could be posed is if the  
6 price of alpha declines, the brewers, who are the  
7 consumers, increase their hopping rates. I think that's  
8 very critical because that would prove, in fact if it  
9 were true, that there was elasticity of demand for hops.  
10 Not...

11 \*\*\*

12 [Off the record.]

13 [On the record.]

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE: We're back on  
16 record at 4:39. Mr. Smith, would you just repeat what  
17 you had just said when we had to change the tape.

18 MR. SMITH: Well, again, trying to get away  
19 from the complexities of elasticity coefficients and so  
20 forth, I pose a simple question that if the price of  
21 alpha declines do brewers increase their hopping rates,  
22 brewers being the consumers of the product. And the  
23 question is important that not do brewers purchase  
24 additional hops for inventory, but do they increase  
25 their hopping rates. And the answer to that question is

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1 no. And I think there's brewers in the audience that  
2 could affirm this. There's a couple of reasons why they  
3 don't increase their usage. One, hops have such a  
4 minimal impact on the per unit costs of the beer that it  
5 isn't an economic issue -- significant economic issue if  
6 hops increase in price or decrease in price. But  
7 secondly, the flavor profile of their beers are made up  
8 under -- by a specific formula. Okay. And they're  
9 going to use so many bittering units for a specific beer  
10 because they have a certain taste profile that they want  
11 to maintain. And so to increase or decrease their  
12 hopping rates based on price is just something that  
13 doesn't happen. That, to me, right there tells me again  
14 as a dumb farmer that the demand for hops is very  
15 inelastic and I see that in the market place. We see it  
16 just in the graphs that I showed earlier, as production  
17 increases above that which is demanded, we see a  
18 significant fall in prices. And conversely, this year  
19 is a perfect example of that, as supply comes back into  
20 balance with demand, we'll see an increase in prices.  
21 So reasons -- third reason for a Hop Marketing Order is  
22 what I call a lack of a competitive market. Over the  
23 last 10 years we've seen some terrific changes in -- and  
24 actually over the last 20 years to be more accurate --  
25 terrific changes in the hop market. 20 years ago

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1 growers sold directly to brewers but not a significant  
2 degree -- American farmers sold a percentage of their  
3 production directly to brewers. But again, it was not  
4 very much and it was just a few growers who were  
5 involved. In the mid-1960's -- excuse me -- the mid-  
6 1980's, a major U.S. brewer came into the market for  
7 hops direct and began to purchase those directly from  
8 farmers. Subsequent to that decision, another major  
9 U.S. brewer came into the market and began purchase a  
10 percentage of their hops directly from farmers. So that  
11 was one of the changes that we saw. And both of those  
12 direct purchase programs still exist today. By the same  
13 token, we had, as growers, multiple dealers, brokers,  
14 processors, whatever term you want to use, that we could  
15 access to sell our hops. And I want to pick a number --  
16 and I don't have it now specifically -- but seven or  
17 eight different dealers we in place. So I'll talk about  
18 that further. I want to go through first the definition  
19 of a market and again it's pretty rudimentary. But a  
20 market essentially is an organized exchange of  
21 commodities between buyers and sellers within a specific  
22 geographic area and during a given period of time.  
23 Markets are the exchange between buyers who want a good  
24 -- obviously the demand side of the market -- and the  
25 sellers who have it, the supply side of the market. In

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1 essence, a buyer exchanges money for a good while a  
2 seller gives up a good and receives money. From a  
3 marketing context, in order to be a market, the  
4 following conditions must exist; the target consumers  
5 must have the ability to purchase the goods or services.  
6 They must have a need or desire to purchase. The target  
7 group must be willing to exchange something of value for  
8 the product. And finally, they must have authority to  
9 make a purchase. If these variables are present, a  
10 market exhibits. However, the definition of a  
11 competitive market is a market with a large number of  
12 buyers and a large number of sellers such that no single  
13 buyer or seller is able to influence the price or any  
14 other aspect of the market, that nobody has any  
15 significant -- I interjected significant -- any market  
16 control. Market control is essentially the ability of  
17 buyers or sellers to exert influence over the price or  
18 quantity of a good, service or commodity exchanged in a  
19 market. Market control depends on the number of  
20 competitors. If a market has a relatively few buyers  
21 but many sellers, then the buyers tend to have  
22 relatively more market control than the sellers. The  
23 converse occurs if there are many buyers, but relatively  
24 few sellers. If the market is controlled in the supply  
25 side by one seller, we have a monopoly. If it is

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1 controlled in the demand side by one buyer, we have a  
2 monopsony. Most markets are subject to some degree of  
3 control. When we go back and look at the hops that are  
4 produced in the United States -- and this is the larger  
5 class of varieties -- and I'm going to -- I'm sorry. I  
6 apologize. This isn't really the slide that I wanted to  
7 utilize. I want to go back up a ways. Excuse me.  
8 There we go. Sorry. We look at the distribution of the  
9 hop varieties. And I've been talking, as you recall,  
10 mainly in these varieties of over 10 percent. But  
11 looking at the distribution of all the varieties, it's  
12 fairly interesting when you look at it from a  
13 competitive market standpoint. The Willamette's are  
14 purchased primarily by -- there's only one buyer.  
15 They're a major U.S. brewer and they purchase the  
16 majority -- the vast majority of these hops directly  
17 from farmers. Some are purchased through the dealer  
18 network. But the market is -- and I'm going to venture  
19 a guess here -- 95 percent of these hops, 90 percent  
20 possibly of these hops are going to this particular  
21 brewer or possibly another -- excuse me -- foreign  
22 brewers or international brewers that brew this beer for  
23 -- the same beer for the same brewer. I know that  
24 wasn't clear so I'm not even going to try to clean it  
25 up. Cascade -- also a percentage of the Cascade are

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1 purchased by this brewer as well. The Perle, primarily  
2 only one brewer has been purchasing those as well. This  
3 other aroma category is primarily what the craft brewing  
4 industry is utilizing. They use these other varieties  
5 as well, but I mean a big percentage of them are coming  
6 out of this three percent area there. The point being  
7 that you could make a case that in the aroma market is  
8 not a competitive market necessarily. I'm not saying  
9 that anybody has exerted undue influence on it. I'm  
10 just saying that because of the lack of purchasers, it's  
11 an uncompetitive market. When we look at the 75 percent  
12 of the other hops that are in the high alpha category,  
13 again, it's interesting to note from a competitive  
14 market standpoint what are the outlets for growers for  
15 these hops. I mean who can they sell them to. About 25  
16 to 30 percent of the volume of these hops is run through  
17 a private company that's owned by growers but it's  
18 really somewhat closed to outside growers. The bulk of  
19 the product that's delivered to that group is delivered  
20 by the owners of the company. And so for a grower --  
21 third party grower off the street to deliver any of  
22 these varieties to that company, I'm not going to say  
23 it's impossible but it doesn't happen on a regular  
24 basis, okay, and there's no guarantee that it can happen  
25 on a regular basis. So that takes care of about 25 to

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1 30 percent of these block of hops. So the balance -- 70  
2 to 75 percent of those hops for the growers have to go  
3 through two merchants. They are companies that also  
4 happen to be growers but they have storage facilities,  
5 processing facilities, marketing infrastructure and so  
6 forth. But those are the only outlets. So again, you  
7 can make a case that in all of the U.S. varieties or the  
8 bulk of the U.S. varieties today, the growers are faced  
9 with an uncompetitive market situation. Okay. And that  
10 differs significantly from the market as it existed 20  
11 years ago in 1983, 1984, 1985 and those areas when we  
12 had multiple buyers in the forms of multiple dealers and  
13 we also -- that was before we had any direct contact or  
14 direct contracts with domestic brewers. So I'll run  
15 back now back to where we were if we can.

16 ADMINISTRATIVE LAW JUDGE: Let me interject  
17 for just a moment, Mr. Smith. I do want us to close  
18 about 5:00 p.m. today and I want to ask Mr. Monahan if  
19 you have any copies of exhibits that you want to  
20 distribute before we disperse tonight?

21 MR. MONAHAN: Your Honor, I don't. I'm going  
22 to making those copies at the conclusion of today's  
23 hearing and I'll have them before we convene in the  
24 morning.

25 ADMINISTRATIVE LAW JUDGE: Okay. Mr.  
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---

1 Moody, I'll get you in just a moment. Court reporter,  
2 I'd ask you not to ship any tapes tonight because if  
3 you'll wait until you can send them with copies of  
4 statements as we go, I really think it will help the  
5 typist. Okay. Mr. Moody, your...

6 MR. MOODY: Just a point, Your Honor, and  
7 it's really, I suppose, up to Brendan, that we'd  
8 certainly be willing to go passed five so we can move  
9 things along. We'd be willing to go as late as the  
10 witness would care to go and Your Honor would care to  
11 go.

12 MR. MONAHAN: I defer to Your Honor.

13 ADMINISTRATIVE LAW JUDGE: All right. I  
14 would like to do that on any night other than tonight,  
15 the first night, because we did say in the notice that  
16 we would quit at 5:00 and because there's a lot of  
17 copying to be done -- this was our maiden voyage. It's  
18 kind of a shakedown cruise. And so I would appreciate  
19 the ability to work late on another night -- other  
20 nights other than tonight. All right. Then Mr. Smith,  
21 you have until 5:00. You may resume.

22 MR. SMITH: We didn't get charged with that  
23 time right there. Did we?

24 ADMINISTRATIVE LAW JUDGE: Probably so.  
25 I'm sorry. Go ahead.

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1                   MR. SMITH:       Okay. Well, the next question  
2       that I pose is will a Hop Marketing Order be effective  
3       in stabilizing the market for growers. Whether or not a  
4       future one would be I'm not sure. The only one I have  
5       any familiarity with is the previous order. And I've  
6       enjoyed production in the previous order from 1975,  
7       which is when I came in -- actually it was 1974 when I  
8       came into the industry until the order was terminated in  
9       the mid-1980's. So this is a graph of the U.S. season  
10      average price from 1950 through the year 2000. And what  
11      I've done is segment out the season average price, both  
12      pre, post and during the last Hop Marketing Order. Pre-  
13      Hop Marketing Order, this is what the prices looked like  
14      from 1950 through 1965. Beginning in 1966, we had a --  
15      the marketing order came into effect and was in effect  
16      until 1983 through the 1983 crop. And we can see that  
17      the marketing order -- during the period of the  
18      marketing order the season average price increased every  
19      year. We do see kind of an aberration in the latter  
20      part of the previous hop marketing order. The first 14  
21      years the price increases were fairly moderate but  
22      steady. In 1980, we saw a terrific jump in prices  
23      followed significantly higher prices relatively speaking  
24      in the early '80's. And this was due primarily to the  
25      fact that in 1979 the Germans had a very poor crop. And

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1 while we didn't see a significant jump in pricing in  
2 1979 on an average basis, we did in 1980. And in 1980,  
3 the Germans followed this '79 crop with another very  
4 poor crop. But another thing that was interesting about  
5 this period of time when you talk about stability of  
6 prices, and growers who operated under this will  
7 remember, that in any given year, as we came into the  
8 marketing season, okay, and we did that -- when we talk  
9 about the marketing season, the hop administrative  
10 committee met in January of each year to review the  
11 production and to set the saleable percentage for the  
12 ensuing year. And I served as an alternate to the  
13 gentleman on my right, Mr. Desserault, as an HAC member  
14 for seven or eight years any way. And one of the things  
15 that was very -- that lent to the stability of the  
16 pricing was that about 90 percent or more of our crop  
17 was sold on contract for the ensuing crop year in  
18 January. So as we went into let's say January of 1977,  
19 for example, 90 percent or more of the crop for the  
20 following crop year was already sold. And so the  
21 fluctuations in production from year to year were only  
22 impacting about 10 percent of the crop, that portion of  
23 the crop that wasn't sold. So that's why even though in  
24 '79 there was this tremendous shortage in Germany,  
25 because the bulk of the crop was sold on contract, the

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1 overall season average price didn't jump much. However,  
2 the next year we saw contracts -- following the '79 crop  
3 failure in Germany, contracts in 1980 were significantly  
4 higher, those portions that hadn't already been previous  
5 sold. And then following the 1980 crop disaster in  
6 Germany we had prices, contracts that growers in this  
7 room, their families, I entered into, at high prices,  
8 significantly higher than the cost of production. Any  
9 way, that's kind of a depiction of the pricing --  
10 average pricing during the Hop Marketing Order. And I  
11 think you would have to term that as being fairly  
12 stable, at least for the bulk of that time period. And  
13 then since the Hop Marketing Order has gone out the  
14 charts looks -- average price chart looks very similar  
15 to the one prior to the Hop Marketing Order. So  
16 essentially what it tells me is that a Hop Marketing  
17 Order can have -- it's possible to have a stabilizing  
18 influence on price. And without a Hop Marketing Order  
19 certainly volatility of price is essentially going to be  
20 the name of the game. At least that's the experience  
21 that we have. And if you were to take that chart from  
22 1950 and run it back to 1860 you would see the exact  
23 same thing, terrific fluctuations in price over a period  
24 of time. And so essentially I think the question  
25 becomes to participants in the industry as the mull over

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1 the opportunity to enter back into a marketing order is  
2 how is their own personal business model best suited.  
3 Is it best suited in a stable pricing environment or is  
4 it best suited in a volatile pricing environment? And  
5 then make a case that there are companies in this  
6 industry that actually can profit from volatility in  
7 price. Okay. I would also put forth I don't think it's  
8 growers that can profit significantly from it, but there  
9 are participants in the industry who can profit from  
10 volatility in price. Finally, not that it's all bad.  
11 We've seen from the data today that the U.S. grower has  
12 lost a significant percentage of market share in high  
13 alpha hops, but we still maintain some advantages over  
14 our competitors in Germany and I think those need to be  
15 pointed out. One, we have higher alpha production on a  
16 per acre basis or a per unit of land basis,  
17 significantly higher than the German farmer. Right now  
18 we have relatively speaking a favorable exchange rate.  
19 We've suffered over the last couple of years with a very  
20 strong dollar. And that's weakened appreciably in the  
21 recent year and a half. And that's helping the U.S.  
22 grower. We have a very good processing and sales  
23 infrastructure and we have consistent production. What  
24 happened in Germany this year does not happen in the  
25 United States. Total crop failures are just not part of

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1 the U.S. producers' situation and you can see that in  
2 the next graph. We can -- the top line is the total  
3 alpha production per -- excuse me -- that's per acre of  
4 the Tomahawk, Columbus, Tomahawk, Zeus. And again,  
5 powdery mildew, when we were first -- when we first were  
6 confronted with powdery mildew growers really didn't  
7 know how to handle it and we were utilizing the wrong  
8 materials and they had a negative impact on production.  
9 What you can see is in the year 2000, 2001, 2002, 2003  
10 the growers have kind of gotten back on top of their  
11 control of powdery mildew. And this consistency of  
12 production over here that we saw prior to powdery mildew  
13 appears to be coming back later in the timeframe. We've  
14 got a U.S. Warrior, U.S. Millennium producing  
15 significantly more alpha than the German Magnum, for  
16 example. So that affords the U.S. grower an advantage  
17 over his German counter part. And when we look at  
18 exchange rates on a long-term basis we can see -- and  
19 what I've done here is I've got a chart going back to --  
20 and I don't know what happened to the years -- but this  
21 goes back to 1973. I think I did 30 years. And we can  
22 see that over that period of time that the U.S. dollar  
23 in relationship to the German Deutchmark has  
24 consistently declined. And of course, in January of  
25 2002, the Deutchmark no longer exists due to the Euro.

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1 But I've gone ahead and converted the current Euro  
2 exchange rates since 2002 to the present day at the  
3 fixed exchange rate between the Euro and the DM to get a  
4 depiction of what the DM actually would be. And we can  
5 see that there's probably, from a statistical  
6 standpoint, some prospect that the exchange rate with  
7 the Deutchmark or with the Euro would continue to afford  
8 some advantages for growers. For the U.S. grower, we're  
9 above the long-term trend line and you can make a case  
10 that at some point we may dip down below that again. Of  
11 course, if I could do that -- you know, if I could tell  
12 you when that was going to be and how much that was  
13 going to be I wouldn't have to worry about farming hops.  
14 But any way, that's -- so I think there are some  
15 advantages still for U.S. growers. We're not going to  
16 lose all of our market share. We're going to be able to  
17 maintain some level of market share and probably for  
18 some time to come. And actually that ends my  
19 presentation.

20 ADMINISTRATIVE LAW JUDGE: High quality and  
21 I appreciate it. Thank you very much, Mr. Smith.

22 MR. SMITH: And Your Honor, I hesitate to  
23 do this, but I will if it helps. I would be more than  
24 happy to donate this Power Book G4 into the record.  
25 That way you would have it available to you. The USDA

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1 would. Anybody else would. And as long as Mr. Roy  
2 doesn't object, because it's his computer, it's yours.

3 ADMINISTRATIVE LAW JUDGE: Let me ask you.  
4 On the reproductions, will they be in color as the  
5 slides were?

6 MR. SMITH: We will.

7 ADMINISTRATIVE LAW JUDGE: Okay.

8 MR. SMITH: We'll do that.

9 ADMINISTRATIVE LAW JUDGE: That's good.

10 Now, you did go very quickly and I think those people  
11 who are going over the record will be able to figure out  
12 what slide you were on and trace your points. When we  
13 have cross-examination on this tomorrow, we may need a  
14 little more -- if you'll bring again your pointer, which  
15 will be very helpful -- even while they're cross-  
16 examining you, we may need a little more detail as to  
17 what you're pointing at needs to be spoken into the  
18 record. For example, if you're pointing at a price of  
19 \$22, then as you point to it you need to say this price  
20 of \$22. If you're pointing to a year of 1964, even  
21 though we can all tell that's what you're referring to,  
22 you may need to identify it in words even though it will  
23 slow you down.

24 MR. SMITH: I'll do my best but you'll  
25 probably have to remind me.

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1 ADMINISTRATIVE LAW JUDGE: All right. Very  
2 good. All right. Then I'd like you all to consider  
3 whether you can go late tomorrow. If there are  
4 objections to that, I'll honor those objections. We did  
5 say we would stop at 5:00. And also consider whether  
6 you can go late the next day, Friday. And I'll talk to  
7 you all about that when we begin tomorrow. So we'll see  
8 you at 8:30 tomorrow morning. This concludes our record  
9 at this time. Thank you. We're off record at 5:04 p.m.  
10 \*\*\*  
11 [End of Proceedings]

## 1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2  
3  
4 IN RE: HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO  
5 AND CALIFORNIA

6  
7 HELD AT: Portland, Oregon

8  
9 DATE: October 15, 2003

10  
11 We, the undersigned, do hereby certify that the  
12 foregoing pages, numbered 1 through 230, inclusive, are  
13 the true, accurate and complete transcript prepared from  
14 the reporting by the reporter in attendance at the above  
15 identified hearing, in accordance with applicable  
16 provisions of the current USDA contract, and have  
17 verified the accuracy of the transcript by (1) comparing  
18 the typewritten transcript against the reporting or  
19 recording accomplished at the hearings, and (2)  
20 comparing the final proofed typewritten transcript  
21 against the reporting or recording accomplished at the  
22 hearing.

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24 Date:

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26 Marisa G. Baublitz, Transcriber  
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29 Date:

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